

EXHIBIT K

C O N F I D E N T I A L

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re PETROBRAS SECURITIES LITIGATION

Case No.
14-cv-9662

This Document Applies to: All Cases

April 18, 2016
10:40 a.m.

Videotaped deposition of MAURO RODRIGUES
da CUNHA, taken by Plaintiffs, pursuant to Court
Order, held at the offices of Pomerantz LLP,
600 Third Avenue, New York, New York, before
Joseph R. Danyo, a Shorthand Reporter and Notary
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A P P E A R A N C E S : (Continued)

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HENRY MARTE,
Videographer

~oOo~

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2 THE VIDEOGRAPHER: We are now on the
3 record. My name is Henry Marte. I am a
4 videographer for Hudson Reporting & Video.
5 Today's date is April 18, 2016 and the time
6 is 10:40 a.m. This videotaped deposition is
7 being held at 600 Third Avenue, New York,
8 New York taken in the matter of In Re
9 Petrobras Securities Litigation filed in the
10 United States District Court, Southern
11 District of New York.

12 The deponent is Mauro Rodrigues
13 da Cunha. Counsel will be noted on the
14 stenographic record. The court reporter is
15 Joe Danyo, who will now swear in the
16 interpreter and the witness.

17 T A M A H A R A F A G U N D E S, was duly sworn
18 to interpret the questions from English to
19 Portuguese and the answers from Portuguese to
20 English:

21 M A U R O R O D R I G U E S da C U N H A, having
22 been first duly sworn by Joseph R. Danyo, a Notary
23 Public, was examined and testified as follows:

24 EXAMINATION BY MR. MUSTOKOFF:

25 Q. Good morning, Mr. Cunha. My name is

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2 Matthew Mustokoff. I am an attorney for certain
3 shareholders and investors in Petrobras depository
4 shares and certain bonds. My understanding is that
5 we are going to proceed in English today. Is that
6 correct?

7 A. To the extent that I can do it, yes.
8 When I need help, I will ask the lady on my side.

9 Q. Great. Thank you very much.

10 MR. MUSTOKOFF: Just to put on the
11 record, counsel has reached an arrangement
12 whereby plaintiffs will have a total of five
13 and a half hours with the ability to reserve
14 time for rebuttal, and the defendants will
15 have a total of five hours.

16 MR. DAHAN: An objection by one is an
17 objection for all?

18 MR. MUSTOKOFF: That's fine.

19 MR. LIMAN: I would note our further
20 agreement in order to get this done is we
21 will start the defendants' examination
22 around 6 or thereabouts, and we will have
23 about an hour of examination for today with
24 the rest to continue tomorrow.

25 I thank Mr. Cunha and his counsel for

1 Cunha - Confidential

2 their accommodation.

3 MR. MUSTOKOFF: Sure.

4 Q. Mr. Cunha, where do you live?

5 A. Brazil, Sao Paulo.

6 Q. Where were you born?

7 A. Philadelphia.

8 Q. Philadelphia, Pennsylvania?

9 A. Yes.

10 Q. What is your profession?

11 A. I am an economist consultant.

12 Q. Where do you currently work?

13 A. In Sao Paulo.

14 Q. Did there come a time when you became a
15 member of Petrobras' board of directors?

16 A. Yes.

17 Q. When was that?

18 A. It was in April 2013.

19 Q. And can you describe the circumstances
20 surrounding your appointment to the board?

21 A. Okay. I am CEO of AMEC, an investor
22 organization which was concentrated in efforts from
23 minority shareholders to elect an independent
24 member to the board. That effort started in 2011.
25 They launched my predecessor as a candidate, and he

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2 was not elected given difficulties in the proxy
3 voting process.

4 In 2012 I was then the candidate and was
5 not elected for the same reason. Certain
6 regulatory improvements in Brazil allowed names
7 nominated by minority shareholders to finally be
8 included on proxy cards, and when that was done I
9 was able to be elected in 2013. When I was
10 elected, this group of shareholders also elected
11 two members to the council fiscal, and in 2014 I
12 was reelected, plus our group was able to elect
13 another independent director.

14 Q. You mentioned the council fiscal. What
15 is that?

16 A. Council fiscal is a corporate body
17 within Brazilian corporations that is elected by
18 shareholders with the objective of overseeing
19 financials and how the legal and fiduciary duties
20 are performed.

21 Q. During your tenure on the board of
22 directors, did you serve on any committees of the
23 board?

24 A. Yes. In the first year I served on the
25 audit committee.

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2 Q. How long did you serve on the audit
3 committee?

4 A. One year.

5 Q. Just one year?

6 A. Yes.

7 Q. What time frame did you serve on the
8 audit committee?

9 A. From my initial election in April 2013.
10 I have to say that it had been a tradition of
11 Petrobras to include in the audit committee the
12 director occupying my seat, so in the past it had
13 been Mr. Fabio Barbosa and then replaced by Mr.
14 Josue Gomes da Silva and then replaced by me.

15 MR. LIMAN: Objection and move to strike
16 everything after the first sentence, which
17 is not responsive to the question. I just
18 ask you to respond to the question asked.

19 Q. So when did you cease to be a member of
20 the audit committee?

21 A. In the first board meeting after my
22 reelection in May 2014.

23 Q. Why did you only serve on the Petrobras
24 audit committee for one year?

25 MR. LIMAN: Objection to the extent that

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2 it calls for speculation.

3 Q. You can answer the question.

4 A. Okay. In that meeting as opposed to
5 what happened in previous years the chairman
6 suggested a rotation among directors throughout the
7 many, the three committees of the board, and as a
8 result of that so-called rotation I would be
9 removed from the audit committee.

10 This was proposed by the chairman and
11 accepted by the majority of the board under protest
12 from the two independents and the board member
13 representing employees.

14 Q. So there were some members of the board
15 that voted against your removal from the audit
16 committee?

17 A. Yes.

18 Q. Who voted against your removal?

19 A. I did not vote. I did not consider that
20 decision to be correct. The internal bylaws also
21 allowed for a committee comprised of up to five
22 members, if I'm not mistaken, and I suggested that
23 I continue on the audit committee, so the whole
24 idea of making that vote was to meet out of order
25 and then I didn't vote. Mr. Jaose Monforte voted

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2 against that decision, and Mr. Silvio Sinedino also
3 voted against it.

4 MR. LIMAN: Objection. Move to strike
5 the first part of the answer.

6 Q. I am going to show you, Mr. Cunha, what
7 has been premarked as Cunha 1.

8 (Cunha Exhibit 1, Minutes of 72nd
9 meeting of audit committee dated
10 February 25, 2014, was so marked for
11 identification, as of this date.)

12 Q. What I have handed you appear to be
13 minutes of the 72nd meeting of the audit committee
14 dated February 25, 2014. I will represent this
15 document was produced by Petrobras.

16 MR. LIMAN: Matt, do you have copies of
17 the exhibit available for counsel? We just
18 have courtesy copies of the translation.

19 MR. MUSTOKOFF: They are going around.

20 Q. Sir, do you recognize this document?

21 A. Yes, I do.

22 Q. Do you recognize these to be the minutes
23 of the February 25th, 2014 audit committee?

24 A. Yes.

25 Q. Sir, if you see on the first page, is

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2 that a list of the attendees at the meeting?

3 A. That's correct.

4 Q. You were present, correct?

5 A. Yes.

6 Q. As well as Mr. Barbassa?

7 A. Um-hum.

8 Q. Now, if you turn the page, is it a fact
9 that representatives of PWC were also in
10 attendance?

11 A. That's correct.

12 Q. Now at the bottom of that page, sir,
13 there is a heading that reads "Agenda," and it
14 reads "At the beginning of the meeting board member
15 Sergio Quintella questioned board members if there
16 is any issue to be reported," and then it goes on
17 to say that board member Mauro Rodrigues da Cunha
18 questioned the committee if a technical note had
19 been issued about the refining park. Do you see
20 that, sir?

21 A. I do.

22 Q. What was the refining park? What is
23 this a reference to?

24 MR. CARNEY: We object to the use of the
25 translation, and I reserve my rights as I

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2 have in the past.

3 MR. MUSTOKOFF: Noted.

4 MR. LIMAN: I object to the specific
5 question in the translation. As I
6 understand it, the exhibit that has been
7 marked is the Portuguese, correct?

8 MR. MUSTOKOFF: That's correct. We have
9 provided counsel with English translations.
10 However, only the Portuguese version of the
11 document is being admitted.

12 MR. LIMAN: I would just ask that you
13 ask the witness what the language says, so
14 that if he provides a translation, you have
15 got his translation and not your
16 translation.

17 MR. MUSTOKOFF: That's fine.

18 Q. Sir, did I correctly read the contents
19 of the minutes to you?

20 A. Yes. Well, in my understanding this
21 sentence makes reference to a request that was
22 previously done on a technical note.

23 THE WITNESS: What would be the best
24 translation?

25 THE INTERPRETER: Refining park.

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2 A. Then on the refining park. The total,
3 it is all-inclusive unit of refining plants owned
4 by Petrobras.

5 Q. What was the issue that you were raising
6 with the audit committee, sir, in respect, in
7 connection with the refining park?

8 A. Okay. If we go back a few meetings, it
9 would surface that I was questioning their decision
10 to take all of the plants as a single
11 revenue-generating unit for accounting purposes for
12 the purposes of calculating the impairment test,
13 and I had made several questions on the technical
14 grounds for that and I was expecting that note,
15 which didn't arrive until that meeting, and to my
16 recollection never did.

17 Q. You never received that document?

18 A. I believe no, I have not received it.

19 Q. I don't want to misstate your testimony,
20 but was there a concern you had regarding the
21 accounting for the refining park?

22 MR. LIMAN: Objection to the form.

23 Q. You can answer.

24 A. Yes. I had reason to believe that the
25 assets were registered at a number that was not

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2 consistent with the economic reality of the
3 company. Therefore, I would expect, I was
4 expecting an impairment adjustment which didn't
5 happen.

6 So I was questioning the assumptions
7 behind that test and trying to get to the bottom of
8 how we were about to publish financials in which
9 the assets were to my understanding so much
10 overvalued.

11 Q. And what was the basis for your concern
12 that the assets were overvalued?

13 A. Over the year in which I had been on the
14 board it became clear to me that some of the
15 investments were significantly above plan, above
16 budget, and it was very unlikely that those assets
17 would be able to generate economic profits over the
18 forthcoming years, and therefore I wanted to get a
19 better understanding of it.

20 Q. Which assets are you referring to?

21 A. The refining plant, notably the two new
22 ones, Abreu e Lima and COMPERJ, and specifically
23 Abreu e Lima, which to my recollection was already
24 undertaking an impairment test in that year.

25 Q. Were your concerns based on your review

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2 of internal Petrobras documents?

3 A. It was based on that, plus a very large
4 number of conversations with people at the company
5 and my own conclusions and analysis of information
6 that we had.

7 MR. MUSTOKOFF: I would like to show the
8 witness the next exhibit which has been
9 premarked as Cunha 2.

10 (Cunha Exhibit 2, Letter to the CVM, was
11 so marked for identification, as of this
12 date.)

13 Q. Mr. Cunha, do you recognize this
14 document?

15 A. Yes, I do.

16 Q. What is it?

17 MR. LIMAN: If you would just give us a
18 second to look at the document. Thank you.

19 A. I was initially requested the investor
20 relation director, Mr. Barbassa, to broadcast my
21 vote, and I cite the appropriate legal reason for
22 that. I was disagreeing with the decision that
23 affects investors, and as I had received no
24 feedback over the seven days, I went directly to
25 the CVM and requested that the vote be publicized.

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2 Q. When you say CVM, what is the CVM?

3 A. It is a Brazilian securities regulator.

4 Q. Is that similar to the Securities and
5 Exchange Commission in the United States?

6 MR. LIMAN: Objection to the form. Lack
7 of foundation.

8 A. It is a regulator of capital markets.
9 It has different degrees of freedom than the SEC,
10 to my knowledge.

11 Q. Does this letter to the CVM attach the
12 votes that you were just referring to a moment ago?

13 A. Yes.

14 Q. If you turn to the third page of the
15 document, there is a paragraph which I will read
16 and I ask for you to confirm that my reading
17 accurate reflects what you see in Portuguese. The
18 document reads "To make this abundantly clear,
19 Article 6 of ICBM 481 establishes that the company
20 must make available to shareholders via the
21 electronic system on CVM's page on the worldwide
22 computer network any other information and
23 documents relevant for the exercise of the right to
24 vote at a meeting. The company must promote the
25 immediate publication of the dissenting votes

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2 handed down by me, considering that its content is
3 clearly relevant to the proper and conscious
4 exercise of voting on the part of Petrobras
5 shareholders."

6 Do you see that?

7 A. Yes.

8 THE WITNESS: Do you agree with the
9 translation?

10 MR. CONTRUCCI: The first word is wrong.

11 THE WITNESS: Yes, the first word is
12 wrong.

13 MR. CONTRUCCI: Finally, lastly.

14 THE WITNESS: Other than this, do you
15 agree?

16 THE INTERPRETER: I agree.

17 Q. These are your words, sir?

18 A. Yes.

19 MR. LIMAN: With the word "finally"
20 substituted for "abundantly"?

21 MR. MUSTOKOFF: Yes, noted.

22 Q. Was it important in your view for the
23 Petrobras shareholders to be informed of your
24 dissenting votes to the financial statements?

25 A. Absolutely.

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2 Q. Why?

3 A. Well, first, this is the way CVM has
4 been ruling on such matters. Regulation, as you
5 see, requires that it is publicized and the fact
6 that a director is voting against the financial
7 statements, and in the case of the second vote on
8 the pricing policy, I think it is very relevant on
9 the investor's decision to vote yes or no on the
10 financial statements that are submitted to the
11 shareholder meeting.

12 Q. You asked the company to release your
13 votes, correct?

14 A. Yes.

15 Q. Did the company release your votes?

16 A. No. It released a summary of the first
17 vote.

18 Q. Were you ever given an explanation from
19 the company as to why the full version of your
20 dissenting vote was not published?

21 A. Not really.

22 Q. If you turn to the next page, you will
23 see at the top it says "First Vote."

24 A. Um-hum.

25 Q. You say "I register my vote against the

1 Cunha - Confidential

2 approval of the Petrobras financial reports." In
3 Portuguese and in English. Is that correct?

4 MR. LIMAN: Objection to form.

5 A. That's correct.

6 Q. Then you list several reasons for your
7 vote, correct?

8 A. Yes.

9 Q. The first point there, it says "Lack of
10 timely sending of the reports for analysis to the
11 members of the board. I reiterate my understanding
12 that it is not possible to reach a view about the
13 proper rendering of accounts of a company so
14 complex on a presentation of a few minutes without
15 the material having been sent sometime before."

16 MR. LIMAN: Objection to the form and to
17 the translation. Why don't you just ask the
18 witness what point 1 says? You will have a
19 clean record that way.

20 MR. MUSTOKOFF: Lewis, when it is your
21 turn to ask questions, you can ask whatever
22 questions you would like, and I hadn't asked
23 a question yet, and I would appreciate that
24 you wait until I ask a question before you
25 object.

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2 Q. Did I read that passage correctly?

3 MR. LIMAN: Objection to form.

4 THE WITNESS: Do you agree?

5 THE INTERPRETER: I agree.

6 A. Okay. Yes.

7 MR. LIMAN: Objection. It is not a
8 proper answer for the witness to say to the
9 interpreter do you agree.

10 MR. MUSTOKOFF: Noted.

11 Q. Sir, could you describe what you are
12 talking about here with respect to the lack of
13 timely sending of reports for analysis to board
14 members?

15 A. Reports were sent on the spot for the
16 immediate vote. It would be absolutely impossible
17 to read the document and form an opinion before the
18 vote.

19 Q. If you go down to the fourth point,
20 would you mind reading the first sentence under the
21 fourth point there, sir.

22 A. I ask my translator to do that for me.

23 THE INTERPRETER: In English?

24 MR. MUSTOKOFF: We can have you read it
25 in Portuguese and then the translator can

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2 translate.

3 THE WITNESS: That's fine.

4 THE INTERPRETER: "Lack of information
5 and apparent inadequacy of accounting of the
6 investments in the refineries."

7 MR. MUSTOKOFF: Could you read the next
8 sentence, sir.

9 THE INTERPRETER: "I understand that the
10 company convinced its independent auditor of
11 its approach, which is the only in the world
12 to evaluate its refinery park in an
13 integrated manner without analyzing the need
14 of impairment of individual refineries."

15 Q. Just please read the next sentence, sir.

16 THE INTERPRETER: "The approach together
17 with the economic financial analysis of the
18 investment would have led to the conclusion
19 that there will be no need for impairment in
20 the refinery units."

21 MR. MUSTOKOFF: Thank you.

22 Q. Sir, at this time did you believe that
23 an impairment was required for these assets?

24 A. At that time I thought that was very
25 likely and I wanted to see the technical data to

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2 support that impression, and I never received that
3 data.

4 Q. What was the basis for your belief that
5 an impairment might be required?

6 MR. LIMAN: Objection to the form.

7 A. Again, my witnessing the amount by which
8 these investments were over budget, it seemed very
9 likely that an impairment was in the order.

10 Q. Do you have a sense as to how much over
11 budget these assets were?

12 A. The initial budget for Abreu e Lima was
13 something to the tune of 4 or 4.5 billion U.S.
14 dollars and ended up costing north of \$20 billion,
15 so it was a fivefold increase.

16 Q. Now you reference "Lack of information
17 and apparent inadequacy of accounting of the
18 investments in the refineries."

19 How is the inadequacy of the accounting
20 apparent to you?

21 MR. LIMAN: Objection to form.

22 A. I did a lot of homework to try to
23 understand how many companies in the world with
24 such large refining operations accounted for their
25 assets, and I even had assistance from the

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2 auditors, I don't recall whether it is in the
3 minutes or not, and I questioned them whether there
4 were other examples of companies that considered
5 such a large number of refineries in a
6 continent-sized country as a single
7 revenue-generating unit, and they were unable to
8 point that out to me. Actually they were quite
9 frank to say that it was perhaps the sole company
10 in the world with those characteristics.

11 I have to say that in my second year we
12 have been able to identify a company in Spain which
13 actually accounted for all of its refinery as a
14 single revenue-generating unit, but Spain is the
15 size of the state of Sao Paulo, so there is a
16 geographic matter involved.

17 So my impression is that this was a
18 decision that was not exactly conservative to
19 perform an impairment test, and apparently in my
20 understanding deliberately chosen to allow for an
21 adjustment not to be made.

22 MR. LIMAN: Objection to the -- move to
23 strike the last part of that answer on
24 grounds of speculation.

25 Q. Mr. Cunha, when you discussed your

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2 concerns with the audit committee during the
3 February 2014 meeting, did PWC have any reaction to
4 your comments regarding the apparent inadequacy of
5 the accounting for these assets?

6 MR. LIMAN: Objection to form.

7 Misstatement of the testimony.

8 A. PWC was always very professional in
9 trying to address my question, but to the extent
10 that the data wasn't there, it became sort of a
11 conversation of opinions. I was questioning
12 whether this should be done in one given way or
13 not, and the company and the auditors were of the
14 opinion that this is the way that it should be
15 done. So we lacked data.

16 Q. Did PWC have the data, to your
17 knowledge?

18 A. I am assuming they did because they were
19 asked whether they reviewed all of these
20 calculations with management and they attested that
21 it did.

22 Q. Mr. Cunha, prior to serving on the
23 Petrobras audit committee had you ever served on
24 the audit committee of a public company before?

25 A. Not on the audit committee. I had

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2 served on boards and I have served on council
3 fiscal, which in many companies perform similar
4 duties to an audit committee.

5 Q. In the times that you served as a board
6 member of these other companies, were there any
7 other instances where you had requested information
8 and denied that information?

9 A. I don't recall.

10 Q. Turning back to Exhibit 2, the page that
11 has your first vote recorded, sir, I ask you to
12 read the last two sentences on the page right
13 before your signature.

14 A. Starting where?

15 Q. Starting with the words "In the absence
16 of this information."

17 THE INTERPRETER: "In the absence of
18 this information, RNEST and COMPERJ which
19 placed among the most expensive refineries
20 in the world, I do not feel comfortable with
21 the absence of the impairment, and I go
22 further this absence will cause additional
23 damage to the credibility of the company:"
24 Something is missing here from the
25 Portuguese to the English version. That is

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2 why I was kind of lost.

3 MR. LIMAN: I would ask the interpreter
4 when she interprets the witness's answer to
5 interpret the answer, not read the document.

6 Is that fair, Matt?

7 MR. MUSTOKOFF: That's fine.

8 MR. LIMAN: Can we tell the interpreter
9 that?

10 THE WITNESS: I do my own translation?

11 MR. MUSTOKOFF: Yes.

12 THE INTERPRETER: In that case he will
13 have to go a little slower. Fine.

14 Q. Mr. Cunha, you mentioned --

15 MR. LIMAN: Do you have an objection to
16 the translation?

17 MS. MYANAKI: It is missing a sentence.

18 THE INTERPRETER: Right.

19 MS. MYANAKI: Can you translate that?

20 THE INTERPRETER: "In the absence of
21 this information and knowing of the high
22 extraordinary cost for the construction of
23 RNEST and COMPERJ, which place them among
24 the refineries, most expensive refineries in
25 the world, I don't feel comfortable with the

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2 absence of the impairment, and I say more,
3 its absence will be will damage even further
4 the credibility of the company."

5 Q. Mr. Cunha, could you please explain that
6 statement. Why in your view would the absence of
7 impairment cause additional damage to the company's
8 credibility?

9 A. The company was already suffering
10 credibility threats with certain corruption
11 investigations, and the fact that these refineries
12 were severely over budget brought in the media a
13 lot of suspicions that they were targets of
14 corruption. The fact is, as I state here, these
15 were among the most expensive refineries in the
16 world when we compare the cap ex involved with the
17 refining capacity.

18 MR. MUSTOKOFF: I am going to hand the
19 witness what has been previously marked as
20 Cunha 3.

21 (Cunha Exhibit 3, Minutes of 73rd
22 meeting of audit committee, was so marked
23 for identification, as of this date.)

24 Q. Do you recognize this document?

25 A. Yes, I do.

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2 Q. What is it?

3 A. It is the minutes of the 73rd meeting of
4 the audit committee.

5 Q. Do you recall this meeting, sir?

6 A. Yes, I do.

7 Q. What do you recall about it?

8 A. It was I believe my final meeting at the
9 company, at the audit committee, and I mean the
10 good thing about these minutes is that they were
11 fairly detailed. So I can say that the minutes
12 describe with precision what happened in the
13 meeting.

14 Q. Now if you turn to the second page of
15 the document and do you see the heading that says
16 "Question of Order"?

17 A. Yes.

18 Q. Could you please read the first two
19 sentences under that heading.

20 THE INTERPRETER: "Board member Sergio
21 Quintella began the meeting by asking if any
22 of the board members had a question to be
23 considered."

24 MR. MUSTOKOFF: The next sentence,
25 please.

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2 THE INTERPRETER: "Board member Mauro
3 Rodrigues da Cunha asked the other board
4 members about their opinion regarding the
5 topic of Pasadena."

6 Q. Why did you open the audit committee
7 meeting with the subject of Pasadena?

8 A. This is an item that was being
9 informally discussed among directors as a result of
10 statements in the media mentioning that in, if I'm
11 not mistaken 2012, the board had concluded that the
12 acquisition was based on a report that was faulty.

13 THE WITNESS: Would that be the best
14 translation, faulty?

15 THE INTERPRETER: Yes.

16 MS. MYANAKI: Flawed.

17 THE WITNESS: It had mistakes. That has
18 been said by the company and by the CEO
19 repeatedly in the media.

20 Q. Can you describe the nature of those
21 mistakes?

22 MR. LIMAN: Objection. Calls for
23 speculation. The witness was not at
24 Petrobras at the time.

25 A. And I have to agree that I don't have

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2 much to say. What I know is really what was on the
3 media by then and the comments that were made by
4 the company as a response to certain press
5 inquiries, and what the company has said, if I
6 recall correctly, is that they concluded that the
7 opinion that was issued by then downstream officer
8 Nestor Cervero was faulty and that led to the
9 acquisition of Pasadena and to the losses involved.

10 Q. When did the board conclude that the
11 opinion underlying Pasadena was faulty?

12 MR. LIMAN: Objection to the form.

13 Misstates the testimony.

14 A. If I remember correctly, that happened
15 in 2012 before I joined the board, but it was
16 stated by CEO Foster around the time of this
17 meeting.

18 MR. LIMAN: Objection to the extent it
19 calls for speculation, move to strike.

20 Q. You mentioned Mr. Cervero. Was he
21 removed from Petrobras?

22 A. He was removed from Petrobras but he
23 became CFO of BR Distribuidora. It is the largest
24 subsidiary of Petrobras responsible for marketing
25 and distribution.

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2 Q. So he was simply moved from one division
3 to another, is that right?

4 MR. LIMAN: Objection to form.

5 A. He was at the holding company. He was
6 responsible for the downstream division. He was
7 moved to a subsidiary and became CFO.

8 Q. Sir, could you please read the last
9 sentence on the page.

10 THE INTERPRETER: "Board member Mauro
11 Rodrigues da Cunha requested a register that
12 would be sent to the audit committee, a
13 quantification of everything that has been
14 invested in that operation, purchase, post
15 investments including accumulated damages
16 and a flow of monthly capital of the
17 refinery."

18 Q. Sir, what information were you
19 requesting here?

20 A. I was trying to assess the actual
21 all-encompassing cost of the Pasadena venture, if
22 you wish, from the acquisition to the losses
23 incurred and hidden liabilities, so I wanted a
24 statement including everything.

25 Q. Did you ever receive the requested

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2 information?

3 A. As I stated on my last vote one year
4 after this fact, no. I spent over one year
5 requesting that information and did not receive it
6 and I had reason to believe from conversations with
7 members of management that these other items were
8 very significant and would suggest that Pasadena as
9 a whole cost more to Petrobras than what had been
10 publicized.

11 MR. LIMAN: Objection, move to strike.

12 Q. You had concerns that the company had
13 misstated the value of Pasadena?

14 MR. LIMAN: Objection.

15 A. No, it was not an accounting issue. But
16 both in the press accounts and in the accounts
17 tribunal statement, when I saw the way the cost of
18 this unit was calculated as an economist and
19 knowing the status of that operation, it was clear
20 to me that many items were missing, including, as I
21 mentioned here, cumulative losses, cap ex done
22 after the acquisition, and what is not here but
23 hidden liabilities including environmental issues
24 and so forth.

25 Q. Sir, if you turn to the third page of

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2 the document, you will see a paragraph that begins
3 "The member Mauro Rodrigues da Cunha added." Do
4 you see that sentence?

5 A. Should I read it?

6 Q. No need to read it, but I would like you
7 to read the last sentence of that paragraph.

8 THE INTERPRETER: "The board member
9 manifested even further its not
10 understanding the cancellation of certain
11 audits, internal audits in said unit."

12 Q. Could you explain what is this a
13 reference to?

14 A. Well, if we go down the rest of the
15 meeting, we were looking at the internal audit plan
16 and we received detailed information on that and
17 there were a number of planned audits of Petrobras
18 Americas, which is a unit holding the Pasadena
19 refinery, and those audits stood as canceled, so I
20 was questioning why was that happening, especially
21 given that this unit was under so much scrutiny in
22 public eyes.

23 Q. How many internal audits had been
24 planned and subsequently canceled, if you know?

25 MR. LIMAN: Objection.

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2 A. I don't remember that. Well, the data
3 is here, so let me, on the previous year what we
4 can see here is that there has been 64 audits that
5 were canceled.

6 Q. Which page are you referring to?

7 A. I am referring to page 7 of the original
8 Portuguese version. Actually the detailed data
9 should be on attachment 2 to this minutes, which is
10 the annual report of internal auditing in 2013.

11 Q. Mr. Cunha, if you turn to page 14 of the
12 minutes, I ask that you read the first sentence on
13 the page.

14 THE INTERPRETER: "Board member Mauro
15 Rodrigues da Cunha made reference to
16 revisions of contracts of the Abreu e Lima
17 refinery. Some of them were already under
18 14th revision with Odebrecht and Camargo
19 Correa."

20 Q. What is Odebrecht and Camargo Correa?

21 A. Two contractors. They were the leaders
22 of the construction of Abreu e Lima.

23 Q. Before I ask you about those two
24 companies, sir, there were members of
25 PricewaterhouseCoopers present at this meeting on

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2 March 20, 2014, correct?

3 A. Yes.

4 Q. And what was the reaction of the PWC
5 representatives regarding your requests and
6 statements regarding Pasadena?

7 MR. DAHAN: Objection to form.

8 MR. LIMAN: Do we have an agreement, by
9 the way, that objections for one suffices
10 for all?

11 MR. MUSTOKOFF: Yes.

12 MR. LIMAN: Thank you.

13 A. I don't think they actually said
14 anything. I don't remember.

15 MR. LIMAN: Let me just take this
16 occasion to designate the transcript of this
17 deposition as confidential. Thanks.

18 Q. Did they support your request for
19 documentation?

20 A. On Pasadena? I don't think they said
21 anything. We were questioning management
22 specifically.

23 Q. So turning back to page 14 and the
24 reference to Odebrecht and Camargo Correa, were
25 these two companies members of the cartel that did

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2 business with Petrobras?

3 MR. LIMAN: Objection to the form and
4 foundation. Calls for speculation. You
5 haven't established the witness has personal
6 knowledge with respect to the operations of
7 the cartel.

8 MR. MUSTOKOFF: I would ask that you
9 keep your objections to form. We have an
10 agreement that I only have five and a half
11 hours on the record and I ask that you not
12 take up my time with improper speaking
13 objections.

14 A. I really cannot say whether there is a
15 cartel or not. I understand this is under legal
16 scrutiny in Brazil, but Odebrecht and Camargo
17 Correa are two of the companies that are
18 prominently in the media in the Petrobras
19 corruption investigations.

20 Q. Could you read the next sentence on the
21 page.

22 THE INTERPRETER: "Gerson commented that
23 negotiations with Venezuela among other
24 questions in the case of this refinery
25 influenced, was an influence for this great

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2 number of revisions."

3 Q. Please read the next sentence.

4 THE INTERPRETER: "Board member Mauro
5 suggested in lieu of the great number of
6 procedures of the refinery at TCU, that in
7 meeting number 75 of the audit committee
8 they include a specific topic in the
9 internal audit of the Abreu e Lima
10 refinery."

11 Q. Why did you request, make this
12 suggestion, Mr. Cunha?

13 A. Well, it is stated here given that this
14 refinery was severely over budget with a high
15 number of revisions and already under scrutiny of
16 the accounts tribunal, I believe it merited a
17 special topic of internal auditing which had not
18 been done up until then, and that this audit be
19 overseen by the audit committee.

20 Q. Were you present at meeting number 75 of
21 the audit committee?

22 A. No.

23 Q. Why is that?

24 A. Because of the so-called rotation that I
25 mentioned.

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2 MR. MUSTOKOFF: I am going to hand the
3 witness an exhibit that we will mark as
4 Cunha 4.

5 (Cunha Exhibit 4, Minutes of board
6 meeting of April 25, 2014, was so marked for
7 identification, as of this date.)

8 Q. Do you recognize this document, sir?

9 A. Yes.

10 Q. What is it?

11 A. It is the minutes of the board meeting
12 that happened on April 25, 2014.

13 Q. Was this the meeting, the board meeting
14 in which you were removed as member of the audit
15 committee?

16 A. It may have been. Let me just
17 double-check.

18 Yes, it was.

19 Q. If you turn to page 2, toward the bottom
20 of the page there is a sentence that says "Further
21 the chairman of the board argued." Do you see
22 that?

23 A. Yes.

24 Q. Could you please read that sentence.

25 THE INTERPRETER: "Subsequently the

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2 president of the council argued that it
3 would be advisable to have turnover among
4 the participants of the committee aiming at
5 enabling the board members to act in
6 different areas."

7 Q. Mr. Cunha, which individuals were put
8 forward as replacements for the audit committee?

9 A. The chairman recommended Mr. Sergio
10 Quintella, who was already the chairman of the
11 committee, planning minister Miriam Belchior and
12 the CEO of BNDES Luciano Continho.

13 Q. Quintella was the president of the audit
14 committee?

15 A. Yes.

16 Q. He was being essentially renominated
17 here, is that right?

18 A. Yes.

19 Q. But you were not?

20 A. Yes.

21 Q. What did you understand to be the basis
22 for your removal from the audit committee?

23 MR. LIMAN: Objection. Calls for
24 speculation.

25 A. I understood that this rotation was, had

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2 the sole purpose of removing me from the audit
3 committee because the chairman wasn't happy with
4 the work that was being performed.

5 Q. The chairman wasn't happy --

6 MR. LIMAN: Objection. Move to strike
7 on the grounds of speculation.

8 Q. The chairman wasn't happy with the work
9 being performed?

10 A. Yes.

11 Q. Which works was that?

12 A. My work.

13 Q. Specifically?

14 A. All the questions I was asking
15 throughout the previous meetings regarding the
16 financials, regarding impairment, regarding
17 auditing, internal auditing and the Pasadena
18 refinery, the Abreu e Lima refinery notably.

19 Q. Sir, if you look at the bottom of the
20 page, it is the last full sentence on the page
21 beginning with "Board member Mauro Rodrigues da
22 Cunha."

23 A. Um-hum.

24 Q. Could you read that, please.

25 THE INTERPRETER: "After clarification,

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2 board member Mauro Rodrigues da Cunha
3 additionally raised or questioned that by
4 the audit committee regulations, its members
5 should be independent, and that was not the
6 situation of board member Miriam Belchior
7 and board member Luciano Continho because
8 they were employees of the controlling
9 shareholder."

10 Q. Was it your belief that these two
11 individuals were not independent?

12 A. Absolutely.

13 Q. What is the basis for that?

14 A. They were employees of the controlling
15 shareholder.

16 Q. Which is?

17 A. The federal government.

18 Q. And from the perspective of a board
19 director of a publicly traded company, is
20 independence an important principle?

21 MR. LIMAN: Objection. Misstates the
22 record.

23 A. It is absolutely common knowledge that
24 independence is not only good practice, but in many
25 situations it is legally required as is the case of

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2 the Sarbanes-Oxley regulation. I don't believe
3 there is a single corporate governance best
4 practice code in the world that doesn't refer to
5 independence.

6 Q. When you made this statement to the
7 board that these two new individuals were not
8 independent, what response did you receive?

9 A. This discussion to be fully understood
10 needs to take into account a number of exchanges
11 that happened in forthcoming meetings. There were
12 many discussions on, one, whether these individuals
13 were independent, two, whether there was a legal
14 necessity of independence, three, whether there was
15 a necessity by the internal regulations of the
16 audit committee, and that lasted a few months, I
17 believe.

18 Q. Mr. Quintella, you said he was not
19 removed from the audit committee at this time,
20 correct?

21 A. That's correct.

22 Q. How many years did Mr. Quintella serve
23 on the audit committee?

24 A. Six years roughly.

25 Q. Now if you turn the page, you will see

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2 there is a reference to Mr. Monforte. Who is Mr.
3 Monforte?

4 A. He is the independent director elected
5 by non-voting shareholders.

6 Q. Do you see the sentence that begins
7 "Board member Jaose Guimaraes Monforte stated his
8 disagreement"?

9 A. Yes.

10 Q. Could you read that full sentence.

11 THE INTERPRETER: "Board member Jaose
12 Guimaraes Monforte expressed that he did not
13 agree with that interpretation based on the
14 principles of corporate governance
15 recognized by the Brazilian Corporate
16 Governance Institute and by the CVM."

17 Q. Mr. Cunha, what is the IBGC?

18 A. It is an association that was founded 20
19 years ago, has roughly 1500 members and is
20 considered the benchmark in corporate governance in
21 Brazil.

22 Q. And these principles of corporate
23 governance recognized by the IBGC that were invoked
24 by Mr. Monforte during the board of directors
25 meeting, are you familiar with those principles?

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2 A. Yes, I am.

3 Q. Can you explain briefly what they are?

4 A. The IBGC has a code that was then in its
5 fourth edition, it is now in the fifth edition, and
6 the code has definitions of independence, and under
7 no circumstances the definition defended by the
8 Chairman Mantega, that independence has to do only
9 with a formal relation to the company could be
10 acceptable.

11 MR. LIMAN: Objection and move to strike
12 the second half of the answer.

13 Q. Mr. Cunha, after, right after the
14 reference to Mr. Monforte's statement, you will see
15 that the minutes reflect that a vote was taken
16 regarding the membership of the audit committee.
17 Do you see that?

18 A. Yes.

19 Q. What was the result of that vote?

20 A. As usual, all of the directors appointed
21 by the controlling shareholder voted with the
22 chairman. We had a negative vote of Mr. Monforte
23 and Mr. Continho, and I decided not to participate
24 in the vote because I believed it was completely
25 wrong.

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2 Q. Did Ms. Foster vote against your
3 continuation on the audit committee?

4 A. Yes, she did.

5 Q. And you said as usual, all of the
6 directors appointed by the controlling shareholder
7 voted with the chairman. What do you mean by that?

8 A. I don't recall in the two years that I
9 served on this board until 2015, when things
10 definitely changed, a situation in which the other
11 directors didn't vote with the chairman.

12 Q. And I will ask you to read the last two
13 sentences, last two full sentences on this page.

14 THE INTERPRETER: He added --

15 MR. MUSTOKOFF: You know what, I think
16 you might have read the wrong sentence. If
17 you could read the sentence right before
18 that.

19 THE INTERPRETER: "Board member Mauro
20 Rodrigues da Cunha communicated that he
21 would not participate in the vote because he
22 considered it to be irregular, given that
23 there is no bylaws or regulation that
24 contemplates such vote. He added that the
25 argument of rotation configured a true

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2 hypocrisy since this has never been proposed
3 at the company, and that some of the board
4 members were already there for many years in
5 their respective committees including their
6 permanence there."

7 Q. Sir, you reference your removal from the
8 board -- strike that. You say that the board's
9 argument for your removal was a "true hypocrisy."

10 Why is that?

11 A. Because, first, there had never been a
12 rotation before, and as I mentioned, it was not a
13 true rotation, it was just a few names being moved
14 around, and one of these moves was my exclusion
15 from the audit committee.

16 The second thing as I also state here,
17 there was no provision for a vote to take place
18 either in the bylaws or the internal rules of the
19 board, and the internal rules actually state the
20 opposite, which is that the committees are open to
21 any board member that is interested if there are
22 seats available, and there were because the maximum
23 number of members was not three. So the vote
24 didn't have to take place or should not have taken
25 place the way it did.

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2 Q. If you turn the page to page 5, I would
3 like you to read the two sentences beginning with
4 "Board member Mauro Rodrigues da Cunha said."

5 A. Where is that again?

6 Q. On the top of page 5.

7 THE INTERPRETER: "Board member Mauro
8 Rodrigues da Cunha informed that in due time
9 he would forward a representation to CVM."

10 Q. And next, please.

11 THE INTERPRETER: "Also after the vote,
12 he manifested that the indications made by
13 board member Miriam Belchior and Luciano
14 Continho violate the requirements of
15 independence contained in the Sarbanes-Oxley
16 law."

17 Q. And if you could read just one more
18 sentence, the next sentence.

19 THE INTERPRETER: "Board member Jose
20 Monforte requested an in-depth analysis by
21 the legal department and the contents of the
22 Sarbanes-Oxley law on the topic proposed,
23 which a proposal that was approved by the
24 president of the board."

25 Q. Mr. Cunha, do you know the outcome of

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2 the analysis that was requested by Mr. Monforte?

3 A. Yes.

4 MR. LIMAN: You know what? On the
5 content of the legal advice, before the
6 witness answers, I need to consult with his
7 lawyer about potential questions of
8 privilege.

9 MR. MUSTOKOFF: Okay. Let's go off the
10 record.

11 THE VIDEOGRAPHER: The time is 11:46
12 a.m. Going off the record.

13 (Discussion off the record)

14 THE VIDEOGRAPHER: The time is 11:56
15 a.m. We are back on the record.

16 MR. MUSTOKOFF: Mr. Court Reporter,
17 could you please read back the pending
18 question.

19 (Record read)

20 MR. LIMAN: I would ask the witness not
21 to reveal the contents of any legal advice
22 received by him or by the board from company
23 counsel in its capacity as the directors in
24 their corporate capacity. I am prepared to
25 discuss that with you if you would like.

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2 Q. You can answer.

3 THE WITNESS: My idea is to answer based
4 on my recollection of what is on the board
5 minutes in which these items were discussed.
6 Is that fine?

7 MR. LIMAN: Yes, you can do that.

8 THE WITNESS: Okay.

9 MR. LIMAN: Assuming that you agree it
10 doesn't affect a broader waiver.

11 MR. MUSTOKOFF: Agreed.

12 MR. LIMAN: Thank you.

13 A. So we received opinion from internal and
14 external counsel. I learned in this process about
15 an exception for foreign private issuers under the
16 Sarbanes-Oxley Act that could be exempted from the
17 requirement of independence on the audit committee.
18 That in theory allowed a company such as Petrobras
19 to have an audit committee without independent
20 members.

21 Under Brazilian regulation there is no
22 specific legal requirement for independence unless
23 the audit committee is statutory, which is not the
24 case of Petrobras, so the conclusion was that,
25 strictly speaking, Petrobras could move on with an

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2 audit committee that didn't have independent names
3 or a majority of independents despite whatever can
4 be considered best practice.

5 What remained, though, was that, at
6 least for a time to my knowledge, Petrobras still
7 stated in its 20-F forms that its audit committee
8 was independent, and as I mentioned here, the rules
9 of the board also demanded that audit committee
10 members be independent, and that was completely
11 forgotten in that situation.

12 MR. LIMAN: Objection and move to strike
13 the last sentence of the answer as
14 non-responsive.

15 Q. Mr. Cunha, did PWC ever give an opinion
16 regarding the independence of the audit committee
17 following your removal?

18 A. I don't recall. Not to us, to my
19 recollection. Maybe to the company but not to us.

20 Q. And just to be clear, before you were
21 rotated off of the audit committee in April 2014,
22 had any other individual ever been removed from the
23 audit committee by the board of directors, to your
24 knowledge?

25 A. Not to my knowledge.

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2 MR. LIMAN: Objection to form.

3 Q. If you turn back to page 5 of the
4 minutes, the sentence that begins "Board member
5 Cunha once again presented his disagreement." Do
6 you see that?

7 A. Yes.

8 Q. Could you please read that entire
9 sentence.

10 THE INTERPRETER: "Board member Mauro
11 Rodrigues da Cunha complained once again
12 about the procedure adopted and stated that
13 he thought it to be a disgrace what was
14 happening at the board of directors on that
15 day."

16 Q. Mr. Cunha, why was it a disgrace what
17 happened at the board of directors that day?

18 MR. LIMAN: Objection to form.

19 A. My interpretation was that for no
20 particular reason, Petrobras was deciding to move
21 on to an audit committee without independent
22 members precisely at the moment when it was coming
23 to the spotlight with a number of allegations
24 regarding the refineries, Pasadena and so forth,
25 and I don't know if by that date former officer

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2 Costa had already been imprisoned, so my point was
3 precisely in the moment when independence was most
4 important, Petrobras was relinquishing independence
5 because of that decision from the chairman approved
6 by the other directors.

7 Q. Was there a connection in your mind
8 between board independence and the arrest of Mr.
9 Costa?

10 MR. LIMAN: Objection. Calls for
11 speculation. Lack of foundation.

12 A. As you put in your previous question, my
13 understanding is that independence is always
14 necessary, especially in a body like the audit
15 committee. If the company is under scrutiny and
16 allegations of wrongdoing, that independence
17 becomes more necessary. That is my understanding.

18 MR. MUSTOKOFF: I am handing the witness
19 a document that we will mark as Cunha 5.

20 (Cunha Exhibit 5, Letter dated
21 October 21, 2014, was so marked for
22 identification, as of this date.)

23 Q. It is a letter dated October 21, 2014.
24 Do you recognize this document?

25 A. Yes, I do.

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2 Q. What is it?

3 A. Well, it is a request for the inclusion
4 of a number of items on the agenda of the board of
5 directors.

6 MR. LIMAN: I assume you are referring
7 to the bottom e-mail, not the top e-mail?

8 MR. MUSTOKOFF: Well, specifically, I am
9 referring to the e-mail from Mr. Cunha to
10 Mr. Fujikawa and Mr. Salvio.

11 Q. Mr. Cunha, who are those two
12 individuals?

13 A. Mr. Fujikawa is the secretary to the
14 board and Mr. Salvio, I have to be honest, he was
15 either an assistant to the CEO or I think he was
16 responsible for the cabinet of the CEO, so in that
17 respect he also had a legal oversight over the
18 functioning of the board and corporate governance.

19 Q. And you were requesting through this
20 letter that certain agenda items be put on the
21 agenda for the next board meeting. Is that
22 correct?

23 A. That's correct.

24 Q. And were you requesting that the board
25 meeting be set for a certain amount of time?

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2 A. I was requesting that it be longer. I
3 was actually suggesting a two-day meeting.

4 Q. How much time had been set aside for the
5 meeting?

6 A. Well, traditionally the agendas are
7 always allowed for three to four hours of meetings,
8 and it became increasingly clear that it was
9 absolutely insufficient, given the number of issues
10 that we had to discuss, and so I was asking for a
11 more realistic agenda.

12 Q. And you thought two days was required?

13 A. Yes. That is because we had not only
14 these items but also the usual items that were to
15 be discussed on that date.

16 Q. It looks like you have five agenda items
17 listed. Do you see that?

18 A. That's right.

19 Q. Would you please read the first item.

20 THE INTERPRETER: "Detailed presentation
21 on RNEST requested originally on August 22,
22 2014 and which has not been complied with
23 until this date. Within that context, a
24 discussion regarding the document which were
25 circulated among the board members and which

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2 is reattached to this e-mail."

3 Q. If you turn to the third page of the
4 document, sir, do you see the attached letter?

5 A. Yes. You mind if I consult with my
6 lawyer for a second?

7 Q. Sure.

8 (Discussion off the record between
9 witness and his counsel)

10 A. Okay.

11 Q. Everything okay?

12 A. Um-hum.

13 Q. You see the attached letter?

14 A. Yes.

15 Q. Is this a letter you sent to your fellow
16 board members?

17 A. Yes.

18 Q. Before we ask about the letter, sir, how
19 long, how much time was allotted for the next board
20 meeting?

21 A. I don't recall. As a matter of fact,
22 pardon me, I do recall that, I don't remember what
23 the agenda stated but I remember that the meeting
24 started on October 30, it was adjourned, and it
25 continued on November 5th, if I'm not mistaken, in

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2 Brasilia, so it started in Sao Paulo and ended in
3 Brasilia.

4 Q. Could you describe the letter that is
5 attached to the exhibit?

6 MR. LIMAN: Objection to form.

7 Q. Generally.

8 MR. LIMAN: Same objection.

9 A. Well, first, I comment on the lack of a
10 positive response for an extraordinary meeting and
11 then I get into more details as to some of the
12 items that I wanted to discuss in such meeting,
13 including what I understood was a misstatement from
14 Petrobras in relation to press reports concerning
15 Abreu e Lima.

16 Q. Is that misstatement described in this
17 letter?

18 A. Yes, it is. That is what I tried to
19 describe.

20 Q. Could you describe the misstatement?

21 MR. LIMAN: Objection to form.

22 A. The press report stated that Abreu e
23 Lima had been approved even under a scenario where
24 it had a negative net present value, and the
25 company issued a statement denying the fact and

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2 saying that under certain conditions it had a
3 positive net present value.

4 I did a lot of work on some company
5 documents that I requested, some I received, some I
6 didn't, but with what I received, I was able to
7 conclude that the net present value was indeed
8 negative and therefore the announcement to the
9 market was not correct.

10 Q. Mr. Cunha, could you please read the
11 first three paragraphs of the letter beginning
12 "Dear advisors."

13 A. "Dear directors."

14 Q. "Dear directors." Excuse me.

15 THE INTERPRETER: "Dear board members, I
16 confess to be surprised with the position
17 expressed by the chairman of the board
18 regarding the lack of need to have an
19 extraordinary meeting to discuss the serious
20 matters related to RNEST as well as the
21 tacit agreement with their silence of the
22 other board members indicated by the
23 controlling shareholder.

24 "I feel further frustrated by our
25 incapacity to discuss the matter in a more

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2 detailed manner, whether at the requested
3 extraordinary meeting or at the presentation
4 on the matter that I requested on August 22,
5 2014, and that was not included in the
6 original outline or agenda."

7 Q. Just one more paragraph, sir.

8 THE INTERPRETER: "With that, I took the
9 liberty of going deeper on the matter
10 analyzing document DIP AB-CR 327/09, which I
11 received from SEGEPE on July 9, 2014 and is
12 attached to the present e-mail."

13 MR. MUSTOKOFF: Thank you, sir.

14 Q. Could you describe the document you are
15 referring to DIP AB-CR 327/09? Could you describe
16 that document?

17 A. Do you have that document?

18 Q. I do. In fact, I can give it to you.

19 (Cunha Exhibit 6, Document, was so
20 marked for identification, as of this date.)

21 Q. We will mark this as Cunha 6. This was
22 produced as a single document by the company. Is
23 this the document referenced in your letter?

24 A. It looks like it. As you can see, it is
25 fairly long and I studied it a long time ago, but

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2 it looks like the document I was referring to.

3 Q. What in this document did you take note
4 of that led you to the conclusion that the company
5 had misstated information to the public?

6 MR. LIMAN: Objection to the form. Do
7 you have the English?

8 MR. MUSTOKOFF: I don't have the
9 English.

10 MR. LIMAN: I am going to object to the
11 use of this document because it doesn't
12 permit us to object.

13 MR. MUSTOKOFF: I don't have an English
14 version.

15 MR. LIMAN: Objection.

16 A. I have just requested to make sure that
17 the document was available to you gentlemen and
18 ladies because it is an internal document of the
19 company and so it is confidential to the company
20 and it is part of a confidential proceeding that I
21 started on this matter at the CVM, so I just wanted
22 to make sure that the document was on the table.

23 As it is, let me start by asking you a
24 previous question as to what this document is? DIP
25 stands for Petrobras internal document and it in

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2 fact has a number of studies and opinions from
3 different areas of the company in relation to the
4 execution of Abreu e Lima refinery, and what I was
5 able to find out by analyzing these documents is
6 that the actual net present value of the project
7 was negative up until the moment when the company
8 came up with a number of highly dubious assumptions
9 in terms of what could or could not be realized as
10 hypotheses and scenarios that to my understanding
11 should not be a part of a feasibility study.

12 So when one removes such assumptions, it
13 was clear that the present value was negative and
14 therefore the notice to the market that was sent in
15 October 2014, if I'm not mistaken, was not correct
16 in my opinion.

17 Q. What was the negative present value, if
18 you recall?

19 MR. LIMAN: Objection to the form and
20 misstatement of the witness's testimony. I
21 think he expressed an opinion.

22 A. Well, referring to the document, we see
23 two different scenarios with a negative net present
24 value of \$1.9 billion or \$2.7 billion and then --

25 Q. Which page are you referring to just so

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2 the record is clear?

3 A. Well, the pages are not numbered.

4 Q. Look at the numbers at the bottom.

5 A. 70. It is a handwritten 70 on top of
6 the document.

7 Q. It has Bates number 01187093 at the
8 bottom right-hand corner. Is that right?

9 A. That's correct.

10 Q. Continue. I'm sorry.

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4 Q. If you turn back to Cunha 5, which is
5 the letter on the first page of the letter, you
6 will see there is a passage that is italicized do
7 you see that?

8 A. Yes.

9 Q. Can you describe what that passage is?

10 A. This is part of a statement that I did
11 to the CVM and was, I'm sorry, I'm sorry, I take
12 that back. This is part of the statement that the
13 company published on August 27 in response to the
14 press reports that the NPV was negative.

15 Q. Could you please read the company's
16 statement?

17 A. Sure.

18 THE INTERPRETER: "Contrary to what is
19 affirmed by the report in question, said
20 technical opinion of November 19, 2009 in
21 the area of corporate strategy confirms the
22 economic attractiveness of the project based
23 on the result of complementary analysis that
24 considered factors associated factors to the
25 economic life. Tax breaks and the loss

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2 of" -- can I reread this, please --

3 "confirms that economic attractiveness of
4 the project based on the result of
5 complementary analysis that considered
6 factors associated to the economic life, tax
7 break and the avoided market loss. Thus,
8 the opinion in its conclusions affirms that
9 perpetuity" -- "that take into consideration
10 the perpetuity, the analysis of the opinion
11 of the complementary opinions and the tax
12 break and of the avoided market loss, the
13 project presents a positive VPL, and further
14 that the project in operational terms
15 represents a quite positive impact to the
16 national supply system."

17 Q. What is VPL?

18 A. Net present value.

19 Q. So the company was representing a
20 positive net value, correct?

21 A. Yes.

22 Q. It is your belief that the internal
23 documents that we looked at suggest to the
24 contrary, is that right?

25 A. Correct.

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2 Q. If you'll note at the bottom of the page
3 you will note this bulletin was deleted from the
4 Petrobras website. Do you see that?

5 A. Yes.

6 Q. Why was it deleted from the website, if
7 you know?

8 MR. LIMAN: Objection.

9 A. I don't know.

10 Q. If we turn to the next page and I ask
11 you to read the next two paragraphs.

12 THE INTERPRETER: "But going into the
13 facts, it is simply not true that the
14 project had economic attractiveness, the
15 graphic 4 of page 41 of the PBF document
16 (page 33 of executive report of PSD, phase
17 3) shows that there was an exercise with
18 numbers done to show a positive number. I
19 would treat each one of those components
20 individually, but I would focus initially on
21 one of them."

22 MR. MUSTOKOFF: Thank you.

23 Q. Mr. Cunha, you reference a document,
24 executive report of PSD.

25 A. Um-hum.

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2 Q. What is PSD?

3 A. Honestly, I don't recall. It is one, I
4 believe one of the documents that is part of the
5 DIP AB 327. PSD, it is just too many acronyms.

6 Oh, here it is. I don't recall what the
7 acronym means.

8 Q. Let me hand you a document and we will
9 mark it. Excuse me one second.

10 THE WITNESS: My attorney has helped me
11 here. It is decision support package.

12 Q. Before we mark the document, Mr. Cunha,
13 if you look at Cunha 6 and you turn to page with
14 the Bates number at the bottom 1187056 which has
15 the handwritten 33 at the top.

16 A. Okay.

17 Q. Is that the graphic you were referring
18 to?

19 A. I mentioned chart 4.

20 Q. How about if you turn to 1187063.

21 A. That's correct. This is the one.

22 Q. This is the graphic 4 that has been
23 referenced in your letter?

24 A. Correct.

25 Q. What does this establish?

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2 MR. LIMAN: Objection to the form. Use
3 of the word "establish."

4 A. It establishes that the standalone
5 analysis pointed to a negative value of \$3 billion
6 that would be reduced to 1.9 billion if one added
7 the perpetuity calculation and two other factors
8 which I don't recall. I believe they have to do
9 with the discount rate.

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15 Q. Now in your letter you say that this
16 graphic shows that an exercise with numbers was
17 done. What did you mean by that?

18 A. My expression is more qualitative than
19 that. It is not really an exercise in numbers. I
20 am mentioning here the numbers were stretched to
21 make the mark. That is the point.

22 Q. When you say the numbers were stretched,
23 do you mean they were fabricated?

24 MR. LIMAN: Objection to form.

25 A. What I describe in the letter is that

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2 many of the items that make that number come from
3 \$3 billion

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7 So my point with this letter was
8 twofold. One, to point to a faulty statement made
9 by the company, but more importantly, and this is
10 why I was requesting an extraordinary meeting to
11 point to what I believed was a very serious breach
12 in the investment decision-making process of the
13 company, that numbers were being included in the
14 analysis with the express intention of allowing
15 certain decisions to be made.

16 MR. LIMAN: Objection. Move to strike.

17 A. So let's use numerical gymnastics.

18 Q. So you believe that a numerical
19 gymnastic had occurred within this document?

20 A. Yes.

21 Q. The sentence below that in your letter,
22 could you please read that sentence.

23 A. Where exactly?

24 Q. It would be the third sentence on the
25 page with the number 64791.

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2 A. Okay.

3 THE INTERPRETER: "Deep strategy/API
4 111/2009 crystal clear when he says that
5 from an entrepreneurial point of view
6 without considering complementary analysis,
7 the project does not show to be economically
8 attractive."

9 Q. Mr. Cunha, if you turn to page 1187088
10 of Cunha 6, can you identify this document?

11 A. Part of that big DIP, this one produced
12 by the strategy department.

13 Q. This document suggests that the project
14 did not present an economic attractiveness in your
15 view?

16 A. Please allow me a few minutes to review
17 the document.

18 Q. Take your time.

19 A. Okay.

20 MR. LIMAN: Objection to form.

21 A. My understanding of this document is
22 that firstly, it clearly states that from the
23 Petrobras perspective the project has a negative
24 NPV. It makes a number of considerations on the
25 national level whether such a refinery adds value

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2 to the country as a whole.

3 Q. Which page are you referring to, sir?

4 A. To the document as a whole.

5 Q. Okay.

6 A. So it is throughout the document. It
7 recommends a number of analysis and prior
8 considerations before the board moves on with the
9 project, and even some conditions in case it is
10 approved. It adds such analysis that at one point
11 are called sensitivity analysis, but are
12 nonetheless included in the base case that arrive
13 at the positive number. So from an interested
14 perspective, I cannot plausibly say that this
15 points to a project that is positive for Petrobras.

16 Q. Turning back to your letter after your
17 reference to this document, you reference a report
18 from PLAFIN.

19 A. Yes.

20 Q. What is that?

21 A. This is the financial planning
22 department, and if I'm not mistaken, it is also
23 included in Cunha 6.

24 Q. What did that report reflect?

25 A. It also said that the project was not

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2 viable economically and it criticizes a number of
3 assumptions made, which I refer to on the next page
4 of my letter.

5 Q. Could you describe those?

6 MR. LIMAN: Objection. Vague.

7 Q. Could you please describe the criticisms
8 that are reflected in your letter?

9 A. Okay.

10 Q. It would be helpful if you can walk me
11 through them.

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19 Q. Who was it approved by?

20 MR. LIMAN: Objection, foundation.

21 A. It was approved by the board.

22 Q. Board of directors?

23 A. Yes, on the recommendation of

24 management. That is my understanding. Just

25 clarifying, I was not present at the time. That is

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2 just by reading materials.

3 Q. When you say on the recommendation of
4 management, is that a reference to the executive
5 board?

6 MR. LIMAN: Objection, foundation.

7 A. Yes. As a matter of fact, let me take
8 this back. I'm not sure whether the board of
9 directors has specifically approved this investment
10 item or whether management did. We would need to
11 read the minutes of the period to find out.

12 Q. This is Abreu e Lima we are referring
13 to?

14 A. Abreu e Lima, yes.

15 Q. To your knowledge, did PWC ever receive
16 a copy of this letter?

17 A. I don't know.

18 Q. Do you know if PWC ever received the DIP
19 internal document?

20 A. I don't know.

21 Q. Now after you sent this -- when did you
22 first send this letter to the board? Do you know?

23 MR. LIMAN: Objection to form.

24 A. This letter was, I'm not going to recall
25 the exact date, but it is sometime between the end

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2 of August and the end of October 2014.

3 Q. So, for example, if you look at the
4 first page of the document, the very last line, you
5 say the document we have circulated among board
6 members and it is again attached to this e-mail.
7 Do you see that?

8 A. Yes.

9 Q. So this was not the first time that you
10 had sent this letter?

11 A. Oh, no.

12 Q. Correct?

13 A. Correct.

14 Q. After you sent this letter to the board
15 or at any time -- strike that. Any time, at any
16 time after you sent this letter to the board, did
17 you receive any sort of response to the concerns
18 you were raising?

19 A. No.

20 Q. Never?

21 A. Petrobras did answer to the CVM that in
22 their opinion the statement to the market was
23 correct pretty much along the lines that are
24 mentioned here in the italicized text that we
25 discussed.

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2 Q. And what was your assessment of that
3 response?

4 MR. LIMAN: Objection to the form.

5 A. I didn't think it addressed the points
6 that I raised.

7 MR. MUSTOKOFF: Let's mark this as Cunha
8 7.

9 (Cunha Exhibit 7, e-mail and attached
10 document, was so marked for identification,
11 as of this date.)

12 MR. LIMAN: You are just marking the
13 Portuguese as the exhibit? Is that correct?

14 MR. MUSTOKOFF: That's correct.

15 MR. LIMAN: Thank you.

16 Q. Mr. Cunha, do you recognize this
17 document?

18 A. Yes.

19 Q. Could you describe it, please.

20 A. This is the e-mail I sent to the board
21 to let them know that the issues we were previously
22 discussing about Abreu e Lima were brought to the
23 CVM in addition to discussion on the prices of
24 fuels.

25 Q. What is attached to the e-mail?

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2 A. The confidential text that I sent
3 together with Director Monforte to the chairman of
4 the CVM.

5 Q. Mr. Cunha, could you read the first two
6 sentences of your letter to the board.

7 THE INTERPRETER: "We forward for your
8 knowledge a document sent to the chairman of
9 CVM as confidential. The requested question
10 is justified by the repeated frustrations of
11 the initiatives of board members that
12 subscribe it in looking for attitudes of
13 this board of directors to correct practices
14 which are considered illegal and that has
15 caused significant losses to Petrobras."

16 Q. Mr. Cunha, you make reference to
17 practices that you consider illegal.

18 A. Yes.

19 Q. Which practices are you referring to?

20 A. In this case I am mentioning the pricing
21 policies which I consider illegal.

22 Q. That is in connection with Abreu e Lima?

23 A. No, no, no. That is the pricing of
24 fuels.

25 Q. Could you please read the next sentence,

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2 please.

3 THE INTERPRETER: "The signs have been
4 clear and line streaming throughout times.
5 50 days without deliberations in the middle
6 of a corporate crisis probably
7 unprecedented, with unprecedented history,
8 impediment to the practice of fuel prices
9 aligned with the country's legislation,
10 recurrent postponements of internal
11 investigation commissions that because of
12 the limit in scope, we are not able and
13 would not be able to the present date take
14 some action minimally compatible on the part
15 of the administration refuses to face the
16 facts of losses generated by the Abreu e
17 Lima refinery both by the lack of impairment
18 and by the communication made in August that
19 clearly defends past decisions, refuses to
20 hire an independent investigation until
21 forced to do so by an external audit."

22 MR. MUSTOKOFF: Thank you.

23 THE INTERPRETER: You are welcome.

24 Q. Mr. Cunha, had the board --

25 MS. MYANAKI: External auditor.

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2 THE INTERPRETER: Audit.

3 THE WITNESS: Independent auditors.

4 MR. LIMAN: Do you accept that
5 correction to the record?

6 MR. MUSTOKOFF: I do.

7 THE INTERPRETER: From audit to auditor?
8 Is that the correction?

9 MR. LIMAN: The way the interpreter took
10 it down was audit. I think we are agreeing,
11 but tell me if we are agreeing, the word
12 should be "auditor"?

13 MR. MUSTOKOFF: Correct.

14 THE WITNESS: Correct.

15 MR. MUSTOKOFF: Auditors plural, I
16 believe.

17 Q. Mr. Cunha, was there a refusal by the
18 board to conduct an independent investigation until
19 forced to do so by the external auditors?

20 A. Yes.

21 Q. What was the subject matter of this
22 investigation?

23 A. Well, if you go back to the board
24 meeting that took place in either April or May of
25 2014, Director Monforte and I suggests the hiring

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2 of an independent investigation, and we even make
3 reference to a very well-known firm as a necessity,
4 given the news that were coming out of the federal
5 police investigation of Petrobras. We were
6 solemnly ignored and the company ended up doing
7 just that, following instructions from PWC after
8 October.

9 Q. And what was the subject matter of that
10 investigation?

11 A. Allegations of corruption.

12 Q. Was PWC representatives present at the
13 meeting at which you and Mr. Monforte recommended
14 that this investigation be undertaken?

15 A. I don't recall, but if they were, they
16 should be on those minutes.

17 Q. Well, do you recall PWC ever agreeing
18 that there should be an internal investigation into
19 the corruption allegations at any time prior to
20 October 2014?

21 A. No.

22 Q. Then if you could just continue on with
23 the next sentence beginning with the words "We
24 understand."

25 THE INTERPRETER: "We understand that

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2 the role of an administrator is to take to
3 the knowledge of the competent corporate
4 bodies, the illegal acts that come to their
5 knowledge, and when you exhaust those
6 possibilities it is a legal obligation to
7 make such acts come to the knowledge of
8 regulating entities."

9 Q. So, Mr. Cunha, when you refer to illegal
10 acts, are you referring to the acts described in
11 the prior paragraph?

12 MR. LIMAN: Objection to form and asked
13 and answered.

14 A. I am referring to the acts described on
15 my complaint to the CVM, and again we are talking
16 both about the refinery and the prices, and let me
17 just clarify because it might have been
18 misinterpreted when I said it before. I was not
19 alleging illegal acts on the decision taken five
20 years before because it could even be prescribed.
21 What I was focusing was the legality of the
22 statement to the market making reference to a
23 positive NPV when there was not such a thing.

24 The crux of the matter in relation to
25 the refinery was actually the decision-making

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2 process that allowed such losses to take place
3 which put in question the fiduciary duties in
4 general.

5 In terms of the pricing policies, as
6 becomes clear also on the documentation, Brazil has
7 a so-called oil law under which Petrobras operates
8 and it states that fuel prices must follow a free
9 competition principle, and Petrobras was not
10 following free competition principle as it is still
11 not following.

12 Q. Mr. Cunha, if you turn to page 2 of 11
13 of the letter sent to the CVM, do you make
14 reference in the first paragraph to information
15 disclosed to the market? Do you see that? After
16 Roman numeral 2.

17 A. Okay.

18 MR. LIMAN: I'm sorry, where are you?

19 MR. MUSTOKOFF: Under the first
20 paragraph of page 2.

21 MR. LIMAN: Where it says "Most
22 illustrative, Mr. President"?

23 MR. MUSTOKOFF: Correct.

24 MR. LIMAN: I see. Thank you.

25 Q. You see the reference to information

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2 disclosed to the market?

3 A. Um-hum.

4 Q. Is that a reference to the misstatement
5 you were discussing a moment ago?

6 MR. LIMAN: Objection.

7 A. That's correct.

8 Q. If you look at the next paragraph, are
9 you saying here that it was your belief that this
10 reflected a violation of legal duties of certain
11 Petrobras administrators?

12 MR. LIMAN: Objection to the form.

13 A. Yes.

14 Q. Could you elaborate?

15 A. Again my point was that I believed the
16 statements did not reflect the reality that I saw
17 on those documents in Cunha 6.

18 Q. Is this letter similar in sum or
19 substance to the letter you sent to your fellow
20 board members that we were looking at a moment ago?

21 MR. LIMAN: Objection to form.

22 A. It was based on those discussions
23 precisely.

24 Q. So just to be clear, if you look under
25 paragraph 1.2.

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2 A. Um-hum.

3 Q. Could you read that paragraph, please.

4 THE INTERPRETER: "Although it causes
5 surprise that not only the executive board
6 of Petrobras had not communicated to the
7 board members the results of arrangements
8 made nor that the chairman of the board of
9 directors had accepted a request to have an
10 extraordinary board meeting to discuss the
11 corruption and responsibility topics of
12 certain administrators of Petrobras, we
13 cannot but bring to your immediate
14 attention, to bring to the immediate
15 attention of the CVM a fact that is
16 apparently incorrect disclosed in
17 communication to the market by Petrobras."

18 MR. MUSTOKOFF: I think the translation
19 is we cannot fail to bring.

20 THE INTERPRETER: Yes, we cannot but
21 bring or we cannot fail to bring.

22 Q. Cannot fail to bring to the immediate
23 attention of the securities commission. Is that
24 correct, Mr. Cunha?

25 A. That's correct.

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2 Q. Mr. Cunha, did you believe it was your
3 duty as an independent director of Petrobras to
4 bring this incorrect statement to the attention of
5 the CVM?

6 MR. LIMAN: Objection to form.

7 A. After exhausted trying to revert the
8 situation at the company level, yes.

9 Q. How long did you try to revert the
10 situation at the company level before going to the
11 CVM?

12 A. Between August and the end of October,
13 so for two months.

14 Q. Those two months you received no
15 response from the company in the face of the
16 concerns you had raised?

17 A. I received no satisfactory response.

18 Q. If you turn to page 6 and specifically
19 paragraph 1.8, what are you describing in this
20 paragraph, sir?

21 A. It is precisely the argument of
22 fiduciary duties that I mentioned before of
23 approving a statement that doesn't reflect the
24 facts that I saw in the Petrobras documents.

25 Q. So to be clear, was it your belief that

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2 this misstatement reflected a violation of
3 fiduciary duties by the board?

4 MR. LIMAN: Objection.

5 A. I believe so. Well, formally by the
6 executives in charge of making disclosures, but
7 also by the boards since they haven't acted once
8 they were advised of the problem.

9 Q. Sticking with paragraph 1.8, you will
10 see after the third Roman numeral 3 do you see
11 there is a reference to mistaken factual response
12 to the bulletin of CVM that could and can generate
13 significant fluctuation in the share values of
14 Petrobras? Do you see that reference?

15 A. Yes.

16 MR. LIMAN: Objection to the
17 translation.

18 Q. What is that a reference to?

19 A. Again to the statement.

20 Q. Were you concerned that the true value
21 of Petrobras' stock price was not being reflected
22 as a result of the information?

23 A. I considered that this was a
24 possibility, and because of that, the statement
25 needed to be correct.

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2 Q. If you turn to page 10, there is a
3 heading toward the bottom that reads, and please
4 correct my translation if I am incorrect, but I
5 believe it says "The reason for this request at
6 this time." Is that correct?

7 MR. LIMAN: Where are you?

8 MR. MUSTOKOFF: I am on page 10.

9 A. That's correct.

10 Q. What are you describing in this final
11 paragraph?

12 MR. LIMAN: Can you give us a second.

13 A. I am describing the fact that the
14 chairman has refused to discuss the matters that I
15 considered very important. And when I say I, I
16 mean we, because it is Mr. Monforte and I.

17 Q. Was it your belief that this matter
18 warranted the immediate intervention by the CVM?

19 A. Yes.

20 Q. Why is that?

21 A. Again, we are talking about a statement
22 to the market that had it been corrected, it would
23 have said that, yes, Petrobras approved a major
24 investment with a negative NPV and that would have
25 repercussions for the company.

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2 MR. MUSTOKOFF: Let's go off the record.

3 THE VIDEOGRAPHER: The time is 1:05 p.m.

4 We are going off the record.

5 (Recess taken)

6 THE VIDEOGRAPHER: The time is 1:18 p.m.

7 We are back on the record.

8 MR. MUSTOKOFF: I hand the witness the
9 next exhibit.

10 (Cunha Exhibit 8, Document, was so
11 marked for identification, as of this date.)

12 BY MR. MUSTOKOFF:

13 Q. Mr. Cunha, have you ever seen this
14 document before?

15 A. No, I have not.

16 MR. LIMAN: I am going to claw back
17 portions of this document on the grounds of
18 privilege.

19 MR. MUSTOKOFF: This document has
20 already been entered as an exhibit in this
21 case. It was entered as Castro Exhibit 7.
22 There was a discussion during that
23 deposition as to whether it was privileged,
24 and after discussion among counsel with
25 Cleary Gottlieb it was determined it was not

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2 privileged. There was a discussion about
3 clawback, and that clawback was voided, so
4 to speak.

5 MR. LIMAN: I will accept your
6 representation for purposes of the
7 deposition now and go back to the office and
8 confirm that. If the facts you stated are
9 correct, then we will have no problems.

10 Q. You can put that document to the side,
11 Mr. Cunha. I would like to now introduce Cunha 9.

12 (Cunha Exhibit 9, Petition to the CVM
13 signed by Mr. Cunha and Director Monforte,
14 was so marked for identification, as of this
15 date.)

16 Q. Mr. Cunha, just to be clear, the
17 document that we had previously marked Cunha 8, the
18 one that you said you had never seen before, just
19 to be clear, you have never received any sort of
20 response from the company regarding your -- the
21 concerns that you raised?

22 A. I did receive a response, but it was not
23 this document.

24 Q. It was not this document. Okay. Do you
25 have anything to add about this document?

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2 A. I didn't have time to read it. I could
3 read it and answer your questions.

4 Q. That's okay, we will come back to it.
5 In terms of a response from the company that you
6 did receive, could you describe that response?

7 A. So yes, I received a letter from the CEO
8 Graca Foster with two attachments addressing some
9 of the issues. As a matter of fact, no, I'm sorry,
10 that is a different letter. Apologies.

11 (Discussion off the record between
12 witness and his counsel)

13 A. I was referring to another exchange that
14 had to do with investment decision-making process
15 of the company, but it was not a response to the
16 Abreu e Lima situation itself.

17 Q. Could you describe that other exchange
18 regarding the investment decision-making process of
19 the company?

20 A. Okay. That had to do with an e-mail
21 that I sent to directors after the board meeting of
22 February 2014 that approved the capital expenditure
23 program. We received a very big PowerPoint
24 presentation at that time

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3 and I was overwhelmed by the
4 information received.

5 I could not reach a decision on the spot
6 and I abstained from voting. I wrote to the
7 directors a couple of months later saying that
8 after further analysis, it became clear to me that
9 the decision-making process to approve investments
10 was very inappropriate at the company and that we
11 were approving a very substantial amount of
12 investments without any sort of proper analysis or
13 scrutiny from the board, and on the very end of my
14 e-mail, I add as a footnote that had I known in
15 February what I did know at that time, which was
16 June, I would have voted against the capital
17 expenditure program and not just abstain, and I
18 urged the directors to review the decision but that
19 never happened.

20 So to that e-mail Ms. Foster sent me a
21 response which tried to address some of the issues,
22 but in my interpretation not satisfactory.

23 Q. Do you have a copy of the e-mail
24 correspondence that you are referencing?

25 A. I do.

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2 Q. Do you have it with you?

3 A. I have it electronically.

4 MR. MUSTOKOFF: Can we go off the
5 record.

6 THE VIDEOGRAPHER: The time is 1:25 p.m.
7 We are going off the record.

8 (Recess taken)

9 THE VIDEOGRAPHER: The time is 1:26 p.m.
10 Back on the record.

11 MR. MUSTOKOFF: Mr. Cunha, I would ask
12 that you provide us with a copy of the
13 e-mail you just testified about. We had a
14 discussion with counsel regarding this a
15 moment ago, and we are now going to go off
16 the record so you can provide us with that
17 document.

18 MR. LIMAN: I would want to review it
19 first because I gather it is a company
20 document, but assuming there are no issues,
21 then we will be okay with it.

22 THE VIDEOGRAPHER: The time is 1:26 p.m.
23 Off the record.

24 (Recess taken)

25 THE VIDEOGRAPHER: The time is 1:30 p.m.

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2 We are back on the record.

3 BY MR. MUSTOKOFF:

4 Q. Could you please refer to the document
5 marked as Exhibit 9.

6 A. Okay.

7 Q. Do you recognize this?

8 A. Yes, I do.

9 Q. What is this document?

10 A. This is another petition to the CVM
11 signed by myself and Director Monforte.

12 Q. Can you describe the circumstances of
13 this submission to the CVM?

14 A. Yes. At this moment we had already
15 received word from PWC stating that one of the
16 reasons they were refusing to sign off on the third
17 quarter statements was the fact that Mr. Sergio
18 Machado had been implicated in the criminal
19 proceedings running in Curitiba, and the logical
20 step on the interpretation of the independent
21 directors was that this officer needed to be
22 removed to remove at least this objection from PWC,
23 notwithstanding the simple fact that he was
24 implicated in corruption.

25 So there was a second reason for

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2 removing him, and we were absolutely overwhelmed by
3 the chairman's insistence in not taking that
4 decision over the course, if I'm not mistaken, of
5 two meetings, and we were under the impression that
6 the chairman wanted to not take that decision.

7 Board member Sinedino, I believe all the
8 minutes stated that Mr. Machado, the officer in
9 question had links to very high ranking politicians
10 and that could be the reason for that, and we
11 therefore were alerting the CVM that this very
12 basic decision to at least be able to publish the
13 third quarter statement was being postponed without
14 reason.

15 Q. What was Mr. Machado's title?

16 A. He was the CEO of Transpetro, one of the
17 subsidiaries that was responsible for transport of
18 oil and fuels.

19 Q. What was the nature of the corruption in
20 which Mr. Machado was involved?

21 MR. LIMAN: Objection to form and
22 misstatement of his testimony. I think he
23 used the word "implicated."

24 A. To my recollection, Mr. Costa had
25 allegedly given Mr. Machado's 500,000 either reais

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2 or dollars in cash.

3 Q. At this board meeting in October 2014
4 that you are describing here, was there a vote
5 taken with respect to what to do with Mr. Machado?

6 A. Not really.

7 Q. Did you propose a vote?

8 A. I don't recall. Perhaps.

9 Q. Did you propose that he be removed?

10 A. I have to read the minutes. If you will
11 allow me to read the minutes, I can answer your
12 question.

13 Q. Whatever became of Mr. Machado? Was he
14 ultimately removed from his position?

15 A. Yes, he was. He took a leave of absence
16 a couple of times and my understanding is that he
17 is no longer at the firm. He resigned. He was not
18 removed by the company, he resigned.

19 MR. LIMAN: Can I just, I know it is
20 done with all of the right intentions in
21 mind, but I ask counsel not to have colloquy
22 with the witness as we are entitled to have
23 the witness's best recollection.

24 THE WITNESS: Okay. It is my first
25 time. Apologies.

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2 MR. LIMAN: No apologies. With me
3 mentioning it, I didn't mean it to have an
4 implication.

5 Q. What did PWC say about Mr. Machado at
6 this meeting?

7 A. PWC alleged that he was on the sign-off
8 chain of financial statements to a material degree
9 and therefore being suspect in such investigation
10 could not allow PWC to issue an opinion, an
11 unqualified opinion on the financial statements.

12 MR. MUSTOKOFF: We are going to mark as
13 the next exhibit the meeting minutes of the
14 board of directors from the December 12,
15 2014 meeting.

16 (Cunha Exhibit 10, Minutes of board of
17 directors meeting of December 12, 2014, was
18 so marked for identification, as of this
19 date.)

20 Q. Do you recall this meeting, Mr. Cunha?

21 A. Yes, I do.

22 Q. What do you recall about it?

23 A. We were in the middle of a lot of events
24 of investigations and everything. Also discussing
25 on the eventual publication of any data on third

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2 quarter because we didn't have PWC's sign off yet.

3 There were legal discussion on counsel for the

4 directors, so many different items.

5 Q. I understand it was a lengthy meeting.

6 If you can turn to the page with the Bates number

7 in the right-hand corner 1224937.

8 A. Okay.

9 Q. You will see toward the bottom of the

10 page there is a discussion regarding the payment of

11 kickbacks.

12 A. Um-hum.

13 Q. There is a question from Mr. Monforte

14 regarding the kickbacks.

15 A. Um-hum.

16 Q. Am I correct that the minutes reflect

17 that Mr. Mario da Silva said to the contracts

18 continued to be, there are contracts that continue

19 to be paid but that in the accounting ledgers the

20 loss corresponding in the alleged value of the

21 kickbacks has been recognized. Am I reading that

22 correctly?

23 A. Yes, you are.

24 Q. Could you please explain what this is a

25 reference to?

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2 A. To the discussion as to whether we would
3 recognize on the third quarter statements a
4 specific accounting item for the kickbacks as
5 measured by 3 percent of the contracts under
6 investigation.

7 Q. Is that something that the board had
8 agreed to at the time?

9 A. Not the full board. Actually the
10 decision was not taken then. There were many
11 comings and goings on this decision. We initially
12 disclosed a simulated effect before we even
13 published the financial statements, and then
14 finally we published the financial statements
15 against my opinion with that adjustment in place.

16 Q. When you say that the company initially
17 disclosed a simulated effect, what is that a
18 reference to?

19 A. If I'm not mistaken, before we disclosed
20 the third quarter numbers, we disclosed sort of a
21 press release with operating data that made some
22 comments on the possible repercussions of the
23 corruption scandal. And again if I'm not mistaken,
24 that press release already contained a simulation
25 of the 3 percent number.

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2 Q. Why did you vote against the financial
3 statements?

4 A. Which financial statements?

5 Q. The financial statements, well, why
6 don't you tell me which financial statements did
7 you vote against?

8 A. I voted against the financial statements
9 for the full year ending on December 2014. We
10 didn't have a formal vote on the quarterly results,
11 which was a bad practice in my opinion, but I
12 already expressed my disagreement with the decision
13 to consider 3 percent of the contracts as a
14 corruption charge.

15 Q. Why did you disagree with the decision
16 to use the 3 percent number?

17 A. Because there was no factual basis for
18 that. It was based on hearsay from people that
19 were in jail. Before that decision and after that
20 decision we heard about numbers that were both
21 above that threshold and lower than that threshold,
22 so it had absolutely no formal basis, and what
23 Director Monforte and I had been defending was a
24 full reappraisal of the assets that would clean up
25 everything and using a fair value approach. Any

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2 corruption payment that was made would be written
3 off under that revaluation.

4 Q. Did the company ever hire anybody to
5 conduct that valuation of the assets?

6 A. Yes, at our insistence the company hired
7 two experts. It was supposed to be confidential
8 but everybody knew who they were.

9 Q. Who were they?

10 A. It is public. BNP and Deloitte. And
11 they were hired to come up with a fair value
12 appraisal of the assets that were under
13 investigation.

14 Q. What was the outcome of that appraisal?

15 A. That outcome was a deviation from the
16 accounting numbers to the tune of 88 billion reais.

17 Q. Was that 88 billion reais number ever
18 disclosed by the company?

19 A. Yes.

20 Q. When was it disclosed?

21 A. It was disclosed in February of 2015 in
22 a very -- after a very tense deliberations.

23 Q. Was that number disclosed as an
24 impairment?

25 A. No, and we were convinced by management

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2 and by the external auditors, and I believe that
3 this is correct, that the number that we had in our
4 hands at that time was just a fair value appraisal
5 and the impairment test needed additional
6 information, which is the value in use, but it was
7 a very important benchmark and we felt that
8 disclosing that number was essential, particularly
9 given all the uncertainties that Petrobras was
10 already living for not having published the
11 financial statements on a timely manner.

12 Q. Did you agree or disagree with the
13 decision to not take the full 88 billion reais as
14 the impairment?

15 A. In the end I agreed.

16 Q. You did agree. Because?

17 A. Because we needed additional tests.

18 Q. If you turn to page Bates number ending
19 949, and I would like if you see at the bottom of
20 the page the sentence beginning "Board member
21 Silvio Sinedino asks if PWC is conditioning its
22 signature." Do you see that?

23 MR. LIMAN: I don't see it.

24 A. The very end.

25 MR. LIMAN: It carries over to the next.

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2 Q. It carries over to 950. Mr. Cunha, if
3 you just take a moment to review that portion of
4 the minutes. If you could describe the context of
5 this discussion.

6 A. We were trying to assess what would it
7 take for us to have an opinion from the external
8 auditors based on the requirements that they
9 themselves had come up with. They told us that
10 there were three things that they needed. One was
11 the removal of officers implicated in
12 investigations, and namely Mr. Machado. The second
13 was reassessment of the assets involved. And the
14 third one was an independent investigation.

15 Now the directors were quite anxious
16 that PWC was many times not very objective in
17 saying okay, what do we need to get to that final
18 decision. Do we need to finish the investigation
19 or do we need to start the investigation, do we
20 need to reach certain thresholds in order to get
21 there. So we were trying to get that information.

22 Q. About two-thirds down the page, the
23 minutes reflect that you asked a question of the
24 auditor, Mr. Panassol?

25 MR. LIMAN: Which page are we on?

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2 MR. MUSTOKOFF: Same page, Bates number
3 ending 950.

4 MR. LIMAN: You were on 49 before.

5 MR. MUSTOKOFF: I am on 950.

6 Q. There is a question from Mr. Cunha to
7 Marcos Panassol regarding the reporting line. What
8 is this discussion about, sir?

9 A. Well, I was criticizing the decision to
10 hire a so-called independent committee that would
11 ultimately receive the results of the investigation
12 and report to the board. My point was that the
13 company was proposing bringing in a German national
14 that didn't speak Portuguese, a former member of
15 the Supreme Court in Brazil and the governance
16 director to form that committee, and my
17 understanding was that what we needed at that time
18 was to expedite the process and not to include
19 another layer in a process that needed to be fast
20 so that we could get the financial statements in
21 order, and that the natural structure for that
22 would be for the reporting line to finish at an
23 independent audit committee, which the company used
24 to have until April of that year. So that was my
25 question and Mr. Panassol basically concurred.

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2 Q. Mr. Panassol agreed that the audit
3 committee as comprised at that time was not
4 independent?

5 MR. LIMAN: Objection to form.

6 A. That is my understanding.

7 Q. Is it fair to say that the audit
8 committee at that time was suspect?

9 MR. LIMAN: Objection to form.

10 A. It was not independent.

11 Q. Now if you turn to the next page to 951,
12 you will see that there are some comments made by
13 Ms. Foster.

14 A. Where exactly?

15 Q. Maybe about one-third the way down. It
16 reads "Foster added to this asking the PWC
17 representatives what could be done to cut out steps
18 and accelerate this procedure."

19 A. Yes.

20 Q. Could you read the next sentence,
21 please.

22 THE INTERPRETER: "It asks if the
23 removal of the present CEO as well as those
24 integrated in the executive board would
25 speed up the attainment of an audited

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2 balance sheet."

3 THE WITNESS: Should I continue?

4 MR. MUSTOKOFF: Sure.

5 MS. MYANAKI: The previous translation
6 when you said the removal of the present
7 CEO, I would suggest you change to the
8 departure of the CEO.

9 THE INTERPRETER: "The auditor Marcos
10 Panassol clarified that such a departure
11 would not be capable of healing the question
12 of security and the information related to
13 acts already practiced throughout 2014 and
14 that changes in people could resolve a
15 question related only to this moment, from
16 this moment onward."

17 Q. Mauro, if you could just finish the
18 sentence.

19 THE INTERPRETER: "But regarding the
20 acts practiced and contract implemented, he
21 affirmed that such change would not
22 eliminate the need to investigate because he
23 had to do with acts already practiced during
24 a period which is object of this balance
25 sheet."

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2 Q. Mr. Cunha, you recall this conversation,
3 correct?

4 A. Yes, I do.

5 Q. Was Ms. Foster asking whether she should
6 step down as the president of Petrobras?

7 A. Yes.

8 Q. Was Ms. Foster ultimately removed from
9 her position as president?

10 A. She was.

11 Q. Could you describe those circumstances?

12 A. I understand that when she agreed with
13 Mr. Monforte and I on the disclosure of the fair
14 value appraisal, she entered into a very serious
15 disagreement with the chairman of the board and the
16 controlling shareholder as we have witnessed in
17 that meeting, and not surprisingly right after that
18 she resigned.

19 Q. If you turn to page 953 and you will see
20 at the top of the page it reflects that you made a
21 proposal to the board of directors. Do you see
22 that?

23 A. Yes.

24 Q. Could you describe the proposal that you
25 made?

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2 A. The proposal was to use existing
3 directors, so who already had knowledge of the
4 matter to be responsible for that reporting line
5 instead of bringing more people who had no
6 knowledge and therefore a learning curve.

7 Q. And was this suggestion rejected?

8 A. Yes.

9 Q. If you look at the bottom of the page,
10 there is a reference to the report from the
11 internal investigation committee regarding COMPERJ.
12 Do you see that?

13 A. Yes.

14 MR. LIMAN: You are at the bottom of 53?

15 MR. MUSTOKOFF: Yes.

16 Q. Is it correct to say that the internal
17 investigation committee made a series of
18 recommendations?

19 A. Yes.

20 Q. Did one of those recommendations include
21 that the board of directors file a lawsuit against
22 12 individuals that were identified in the internal
23 investigation committee's report?

24 A. Yes.

25 Q. Sir, have you ever reviewed the internal

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2 investigation committee of COMPERJ?

3 A. I reviewed a few of these internal
4 investigations. I am almost sure that one in
5 particular I have because I may have read a summary
6 of it.

7 (Cunha Exhibit 11, Report, was so marked
8 for identification, as of this date.)

9 Q. Do you recognize this document?

10 MR. LIMAN: Can you give us a second
11 until we get the English?

12 MR. MUSTOKOFF: Sure. We don't have an
13 English version.

14 MR. LIMAN: Then I am going to object to
15 the use of the document and putting counsel
16 in the position where we can't exercise our
17 rights to object or not object and take the
18 position that all of our objections should
19 be preserved, unless you want me to keep on
20 objecting.

21 MR. MUSTOKOFF: No, that's fine. Your
22 objection is noted. I also note you have a
23 Portuguese translator sitting next to you to
24 aid you, but that's fine.

25 MR. LIMAN: What I would ask just to

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2 expedite this is that I have a continuing
3 objection to every one of your questions
4 based upon this document because you haven't
5 given us an English version of it. Is that
6 acceptable?

7 MR. MUSTOKOFF: I note your objection.

8 MR. LIMAN: But, Matt, is it acceptable?

9 MR. MUSTOKOFF: Yes, that's fine. That
10 is noted.

11 MR. LIMAN: So a continuing objection.

12 MR. MUSTOKOFF: I'm not going to spend a
13 lot of time on this document.

14 Q. Mr. Cunha, if you turn to page 51, but
15 before you do that, do you recognize the document?

16 A. I am trying to think about it, but I
17 think I haven't read the full report. No. I only
18 had access to a summary prepared by the chairman of
19 the audit committee.

20 Q. Do you see on page 51 there is a heading
21 numbered 11 and it says "Das Pessoas"?

22 A. Page 51?

23 Q. Bates number 143154.

24 A. Yes.

25 Q. You will see beginning on that page and

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2 through page ending 171, you see there is a list of
3 several individuals?

4 A. Yes.

5 Q. Is it your understanding -- what is your
6 understanding as to who these individuals are?

7 MR. LIMAN: Objection, foundation with
8 respect to a document the witness has not
9 seen.

10 A. They are key executives of the company
11 at the executive manager level or C level. They
12 were linked to downstream investments including
13 COMPERJ.

14 Q. Are these the individuals that were
15 recommended be the subject of civil lawsuits as
16 referenced in the board meetings?

17 A. To my recollection, I was referring to
18 other investigations, and here I don't recall if it
19 is the Pasadena investigation or the international
20 SMS contract investigation which recommended
21 lawsuits against several employees and ex-employees
22 including former CEO Gabrielli, and these lawsuits
23 never happened.

24 Q. If you look at the minutes on the page
25 ending 953, you will see this is a discussion

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2 regarding the internal investigation committee for
3 COMPERJ, correct?

4 MR. LIMAN: Which document are you on?

5 MR. MUSTOKOFF: I am back on the
6 minutes.

7 A. 953?

8 Q. Yes, the bottom of 953. Quintella is
9 discussing the internal investigation committee
10 report for COMPERJ, correct?

11 A. Yes.

12 Q. If you turn the page, it says that the
13 audit committee recommends to the board of
14 directors that it file a civil lawsuit against the
15 12 people listed in the report. Do you see that?

16 A. Yes.

17 Q. Okay. Then if you go down --

18 A. Just if I may.

19 Q. Go ahead.

20 A. You see that the audit committee is
21 recommending to the board, so it is not the reports
22 that recommends the lawsuits, it is the audit
23 committee. It receives the report and recommends.

24 Q. Thank you. I appreciate that
25 clarification. A little bit further down it says

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2 that board member Cunha agreed with the report from
3 the audit committee. Do you see that?

4 A. Yes.

5 Q. Having read that, does that refresh your
6 recollection that you had agreed that the company
7 should pursue lawsuits against the individuals
8 identified in the investigation report?

9 A. Yes.

10 MR. LIMAN: Objection.

11 A. I must say that my statement was not
12 based on the report but rather on the summary that
13 was brought by the audit committee with its
14 recommendations.

15 Q. And is that the summary that can be
16 found attached to these minutes beginning at page
17 1224986?

18 A. Correct.

19 Q. And if you look at the summary right
20 before the COMPERJ summary beginning on Bates
21 number 1224970, do you see there is a summary of
22 the audit committee report regarding RNEST?

23 A. Okay.

24 MR. LIMAN: Give me a second. I'm
25 sorry. Thank you.

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2 Q. Or Abreu e Lima?

3 A. Um-hum.

4 Q. Did you review that document?

5 MR. LIMAN: Objection to the form.

6 A. Yes. Let me just make absolutely clear
7 that both reports do not mention the names of the
8 persons to be prosecuted, and this is something
9 that the chairman of the audit committee has
10 deliberately done and not a practice that I was
11 very comfortable with because it created two layers
12 of information, so the full board did not have
13 access to the full report, just to the summary, and
14 therefore could not make a judgment on each
15 individual.

16 Now if we go back to my comments on that
17 page 954, it is important to mention that what I am
18 saying here on items I, 2I, 3I and 4 and 5, is that
19 based on previous investigation reports, at least
20 one of each that was circulated throughout either
21 the full board or the audit committee when I was on
22 the audit committee, we have seen similar
23 recommendations including prosecution of members of
24 management, and I was calling attention here that
25 these recommendations were not followed, so there

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2 were governance issues with the consequences of
3 these investigation reports.

4 Q. So Mr. Cunha, taking the Roman numerals
5 that you just referenced, if you look at Roman
6 numeral 2, could you read that, please.

7 THE INTERPRETER: "He understood that
8 there was a problem with the governance of
9 the internal investigation commissions that
10 in his opinion showed incapacity to judge
11 acts involving members of the executive
12 board."

13 Q. What did you mean by that, Mr. Cunha,
14 that there was an incapacity for the internal
15 investigation committee to judge acts involving
16 members of the executive board?

17 A. I mean previous investigations that had
18 the unmistakable conclusion of prosecuting certain
19 members of management. As I said, including the
20 former CEO. And those lawsuits never happened.

21 MR. LIMAN: Objection to the extent it
22 calls for speculation with respect to a time
23 period. He is not there, and I move to
24 strike.

25 MR. MUSTOKOFF: I ask that you abstain

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2 from speaking objections, Mr. Liman.

3 MR. LIMAN: Motion to strike.

4 Q. If you turn to page 957, about one-third
5 of the way down, Mr. Cunha, you comment that the
6 internal investigation committee's investigation
7 procedures have proven to be very slow. Do you see
8 that?

9 A. Yes.

10 Q. And you cite Pasadena as an example.
11 Correct?

12 A. That's correct.

13 Q. What was the context of that comment?

14 A. Well, the facts being investigated
15 happened in 2006 and almost ten years had elapsed
16 since then. Because of that, the effectiveness of
17 the investigation may come into question.

18 Q. Just a little bit further down there is
19 a reference to a recommendation you made for the
20 immediate suspension of companies implicated in the
21 Operation Car Wash investigation. Do you see that?

22 A. Yes.

23 Q. Could you describe what that was about?

24 A. Let me try to read that again. Just a
25 second, please.

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2 Q. Sure.

3 A. Here again we see the chairman moving to
4 not decide on something that later on was actually
5 done. The company suspended these companies. As a
6 matter of fact, not in the best manner because it
7 actually created a list of companies that were
8 blocked from contracting with Petrobras when in
9 fact that was not the best alternative.

10 We were talking about biddings that were
11 made by invitation, so all the company had to do
12 was to abstain from inviting these companies and
13 not make a public splash about it as they end up
14 doing. But in this date in particular what we see
15 is Chairman Mantega simply pushing the decision
16 forward.

17 Q. Did there come a time when the company
18 canceled those contracts?

19 A. They didn't cancel the contracts, they
20 suspended the suppliers.

21 Q. When did that occur?

22 A. I don't remember, but shortly after
23 this.

24 Q. So your recommendation as of December 12
25 that the companies be immediately suspended, that

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2 was rejected, correct?

3 MR. LIMAN: Objection.

4 A. Yes.

5 MR. MUSTOKOFF: Let's take a break.

6 THE VIDEOGRAPHER: The time is 2:10 p.m.

7 We are going off the record.

8 (Lunch recess: 2:10 p.m.)

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2 Afternoon Session

3 3:05 p.m.

4 THE VIDEOGRAPHER: The time is 3:05 p.m.

5 We are back on the record.

6 M A U R O R O D R I G U E S da C U N H A, having
7 been previously duly sworn, was examined and
8 testified further as follows:

9 EXAMINATION (Continued)

10 BY MR. MUSTOKOFF:

11 Q. Mr. Cunha, I neglected to ask you at the
12 beginning of the deposition. You are here today
13 testifying pursuant to a court order, correct?

14 A. Yes.

15 Q. Okay. Mr. Cunha, there was some
16 testimony this morning about Mr. Quintella, the
17 president of the audit committee, correct?

18 A. Yes.

19 Q. Is he still with the company?

20 A. No.

21 Q. What happened with Mr. Quintella?

22 A. He was not renominated by the government
23 last year. I understand he is an executive
24 director at FGV, a Brazilian educational
25 institution, and he is a director at Oi

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2 representing Andrade Gutierrez.

3 Q. Could you describe, if you know, the
4 circumstances regarding his departure from
5 Petrobras?

6 MR. LIMAN: Objection to form.

7 A. No. I remember that when I decided not
8 to seek the nomination in 2015, the government also
9 changed substantially all of the directors it
10 appointed with the exception of Luciano Continho.

11 Q. What was the reason for that?

12 MR. LIMAN: Objection to form.

13 Foundation.

14 A. From what I could see, it was in the
15 context of changing management after the departure
16 of Ms. Foster and the arrival of the new chairman,
17 Mr. Fujikawa.

18 Q. You mentioned Andrade Gutierrez. Who is
19 that?

20 A. Andrade Gutierrez is a contractor in
21 Brazil.

22 Q. Do you know if Andrade Gutierrez was at
23 all implicated in Operation Car Wash?

24 A. From the news, yes.

25 Q. What is your understanding?

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2 A. There are certain contracts involving
3 Petrobras and Andrade Gutierrez that are being
4 investigated by the federal courts.

5 Q. You said that all of the directors were
6 replaced with the exception of Continho?

7 MR. LIMAN: Objection to form.

8 A. As a matter of fact, Mr. Navarro, who
9 was nominated a couple of months prior, was also
10 renominated in 2015, but he was new because he
11 replaced Marcio Zimmerman.

12 Q. Do you know why Continho remained on the
13 board?

14 A. No. It was the decision of the
15 controlling shareholder.

16 MR. MUSTOKOFF: I am going to introduce
17 two sets of board meeting minutes, so we
18 will mark as Cunha 12 the minutes from the
19 January 23, 2015 meeting.

20 (Cunha Exhibit 12, Minutes of
21 January 23, 2015 board meeting, was so
22 marked for identification, as of this date.)

23 MR. MUSTOKOFF: And we will mark as
24 Cunha 13 the board meeting minutes of
25 January 27, 2015.

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2 (Cunha Exhibit 13, Board meeting minutes
3 of January 27, 2015, was so marked for
4 identification, as of this date.)

5 Q. Mr. Cunha, do you recall the board
6 meeting on January 23rd, 2015?

7 A. Yes, I do.

8 Q. What do you recall about that meeting?

9 A. This was an extraordinary meeting called
10 by CEO Foster when she received the results of the
11 fair value appraisal that was significantly above
12 anyone's expectation and she wanted the board's
13 guidance as to what to do with that information.

14 Q. When you refer to the fair value
15 appraisal, is that the appraisal performed by
16 Deloitte & Touche and BNP Paribas?

17 A. That's correct.

18 Q. That was the one that resulted in the
19 88 billion reais, correct?

20 MR. LIMAN: Objection to form.

21 Q. Is that right?

22 A. Yes.

23 Q. Were any decisions made by the board at
24 this January 23rd meeting with respect to that
25 appraisal?

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2 A. Can I ask you for a couple of minutes to
3 review the minutes just to refresh my memory?

4 Q. Take your time.

5 A. Okay.

6 Q. What do you recall about this meeting in
7 particular?

8 A. We were absolutely overwhelmed by the
9 size of the discrepancy between the amounts on the
10 books and the fair value. We debated on what to do
11 with it. There was no specific conclusion in that
12 meeting. It came in the forthcoming meeting, but
13 the general agreement was that the number would be
14 publicized. While there is no specific decision to
15 that in the minutes, that is what you can extract
16 from it.

17 Q. So in other words, at this meeting on
18 January 23 it was more or less agreed to that the
19 88 billion reais would be disclosed?

20 MR. LIMAN: Objection to form.

21 A. If not directly the number, that it
22 would be the basis of a disclosure to the market as
23 to the degree of discrepancy between the books and
24 the fair value.

25 Q. Did you have confidence in that number?

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2 A. The number seemed to make sense from an
3 economic perspective. When we looked at the
4 returns on the assets that could be expected from
5 it, there were some questions on the methodologies
6 involved. I was convinced that from a purely
7 technical perspective the approaches were generally
8 correct. CEO Foster was in particular concerned
9 about the idea of stripping out assets that could
10 not be stripped out by itself, so there was a lot
11 of debate on that.

12 Q. What was the resolution of that debate?

13 A. The resolution of what we had hired
14 these consultants to do to find an independent
15 appraisal of those assets had been accomplished, so
16 with that in mind, the idea was that the company
17 would work with the external auditors to expedite
18 the publication of the financial statements that
19 were severely delayed by then.

20 Q. What happened at the next board meeting
21 on the 27th with respect to this?

22 A. Again, I am going to ask for a few
23 minutes to review this.

24 Q. Take as much time as you need.

25 MR. LIMAN: Mr. Mustokoff, do you have a

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2 signed copy of Exhibit 13? It is not
3 signed.

4 MR. MUSTOKOFF: I believe the Portuguese
5 version is signed.

6 MR. LIMAN: Then I am looking at
7 something different.

8 THE WITNESS: Mine is not signed.

9 MR. LIMAN: This does not look like the
10 right copy.

11 MR. MUSTOKOFF: Can we go off the record
12 for one second.

13 THE VIDEOGRAPHER: The time is 3:17 p.m.
14 Off the record.

15 (Recess taken)

16 (Cunha Exhibit 13, Document, was so
17 remarked for identification, as of this
18 date.)

19 THE VIDEOGRAPHER: The time is 3:29 p.m.
20 Back on the record.

21 BY MR. MUSTOKOFF:

22 Q. Mr. Cunha, before we went on break, I
23 had asked you, you had testified about the
24 88 billion reais appraisal that was discussed at
25 the January 23rd board meeting.

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2 A. Um-hum.

3 Q. My question to you is what was the
4 nature of the discussion regarding this appraisal
5 at the next board meeting on January 27?

6 MR. LIMAN: Objection to the form.

7 A. The next board meeting had a substantial
8 discussion on whether that number needed to, one,
9 be immediately included as an impairment of the
10 assets, and two, to be disclosed at all.

11 Q. What was the outcome of that discussion?

12 A. It was a long conversation with the
13 auditors. We were convinced that they should not
14 be considered an impairment on the third quarter
15 results directly because that would violate
16 accounting rules. In theory, you need to do the
17 impairment test on a precise date and that would be
18 the year-end, so the discussion moved as to whether
19 we should disclose the number as a footnote on the
20 financial statements or not.

21 If you look at the times that this
22 meeting started and ended, you will see this
23 meeting took almost ten hours and that is how much
24 debate took place and how many times the meeting
25 was broken for people to leave the room and to

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2 consult with the controlling shareholder directly,
3 so it was a situation in which some directors and
4 management made it a very strong point that this
5 number needed to be disclosed.

6 The chairman believed that it should not
7 because the methods was inadequate to measure the
8 adjustments necessary. I made a strong statement
9 disagreeing from that, and for the first time in
10 the period I was there, the chairman was overruled.

11 Q. Who was the chairman?

12 A. Mr. Mantega.

13 Q. If you look on page 5 of the minutes and
14 there is a reference to Mr. Cunha reading a
15 manifestation. Do you see that?

16 A. Yes.

17 Q. What is this manifestation?

18 A. It was my understanding that both the
19 chairman and the auditors were expressing opinions
20 that contradicted things that were said before on
21 the board, and that in effect what we were
22 witnessing was the simple fact that the financial
23 statements had been overstated since 2013 as per my
24 vote.

25 Q. So what is the nature of these

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2 contradictions that you reference?

3 A. First, the board had decided in November
4 or December and PWC has concurred that the best way
5 to achieve the adjustments necessary to fulfill the
6 requests that PWC put in place in October were by
7 means of an independent appraisal of the fair value
8 of the assets, and throughout the debates over that
9 day PWC was suggesting that that number was no
10 longer appropriate.

11 So my statement here was to relate it to
12 the conflict of PWC as they had signed off on the
13 previous statements and my understanding is that
14 they could not opine in a way that made clear that
15 the statements were wrong before.

16 Q. In these minutes as part of your
17 manifestation you say we are seeing a 180-degree
18 U-turn. Do you see that?

19 A. Um-hum.

20 Q. What is that a reference to?

21 A. It was a reference to the decision
22 proposed by the chairman of not publishing the
23 statements, the number of the fair value appraisal.

24 Q. What was the ultimate decision by the
25 board?

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2 A. The ultimate decision was to publish it
3 as a footnote to the financial statement after the
4 independent directors and management threatened to
5 resign.

6 Q. Was the 88 billion reais disclosed or in
7 fact was it a range that was disclosed?

8 A. Well, the disclosure was in my view very
9 contradictory. The number was there but the
10 footnote made a number of disclaimers and arguments
11 that made more confusion than cleared out things
12 for the market. So there was a clear intention
13 from where I stood to put lots of but's and if's to
14 the number.

15 MR. LIMAN: Objection and move to strike
16 the last portion of that answer as
17 non-responsive.

18 Q. Did you believe that the footnote lacked
19 transparency?

20 A. Yes, I did.

21 MR. LIMAN: Objection to form.

22 Q. How so?

23 A. Do you have the third quarter
24 statements?

25 MR. MUSTOKOFF: Off the record.

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2 THE VIDEOGRAPHER: The time is 3:35 p.m.

3 Off the record.

4 (Discussion off the record)

5 THE VIDEOGRAPHER: The time is 3:54 p.m.

6 We are back on the record.

7 Q. While we are waiting to get a copy of
8 the third quarter statements, let me take you back
9 to the minutes of the January 27 meeting for a
10 second, Mr. Cunha. On page 5, which is where we
11 see the discussion about the 180-degree U-turn, do
12 you see it says "PWC's comments are conflicted"?

13 A. Yes.

14 Q. Then there is a sentence after that.
15 Could you read that.

16 THE INTERPRETER: "They suggested a
17 methodology and now they changed their mind
18 because there was evidence of past errors."

19 A. Because that methodology evidenced.

20 THE INTERPRETER: Past errors.

21 A. Past errors, yes.

22 Q. And if you could read the next sentence.

23 THE INTERPRETER: "We lived with the
24 wrong balance sheet as it was made clear in
25 my vote regarding the financial statements

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2 of 2013 and confirmed by more recent facts."

3 Q. Sir, was it your belief that PWC was
4 taking a different position now because of the size
5 of the appraisal?

6 A. That was my impression, yes.

7 Q. And --

8 A. During the debate, okay, because in the
9 end we reached an agreement to publish the
10 footnotes.

11 Q. Right. Could you tell us sort of who
12 lined up on which side of this debate if you can
13 recall?

14 A. It was myself, Director Monforte,
15 Director Sinedino and management. Director
16 Quintella was on and off. The others were watching
17 and the chairman was insisting that the numbers not
18 be disclosed.

19 Q. That being Mantega?

20 A. Yes. I have to just call attention to
21 one point.

22 Q. Sure. Please do.

23 A. I mentioned that the decision to
24 publicize the numbers were after my threatening and
25 Monforte's threatening to resign as management's as

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2 well, and we also threatened to take the number to
3 the CVM anyway because we thought we had to do
4 that.

5 Q. Did you take the number to the CVM?

6 A. No, because we put it in footnotes.

7 Q. Okay. Have you had a chance to review
8 these minutes?

9 A. Pretty much, yes.

10 Q. Is there anything that occurred during
11 that ten-hour meeting that is not reflected in
12 these minutes?

13 A. Well --

14 MR. LIMAN: Objection to form.

15 A. There were a large number of breaks in
16 which the chairman left for consultations and from
17 the comments that we received during the meeting
18 and when he returned, he was consulting directly
19 with President Dilma.

20 Q. Anything else?

21 A. That should be available anyway, because
22 as we saw in the previous meeting, actually I
23 believe January 23rd we had decided to retain the
24 audios of the meetings going all the way back to
25 August perhaps. Those that had not been destroyed

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2 yet. So this should be reflected in the audios.

3 Q. If you turn to page 10 of the minutes,
4 there is a resolution. Was this the resolution
5 approved by the board?

6 A. Yes, it was approved by the board.

7 Q. It says here that the determination was
8 made not to use the fair value determination
9 methodology as a proxy for adjustments to the
10 company's assets. Do you see that?

11 A. Yes.

12 Q. Then there is a reference to a decision
13 to resume the 3 percent methodology. Do you see
14 that?

15 A. Yes.

16 Q. What is the 3 percent methodology?

17 A. To register a loss of 3 percent of the
18 values of the contracts under investigation as a
19 proxy for corruption payments.

20 Q. What was your view with respect to the
21 3 percent methodology?

22 A. I think it was just plain wrong.

23 MR. LIMAN: At this point?

24 Q. Yes, at this point in time.

25 A. I think it was wrong and I made several

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2 statements to that and I have to say that the
3 understanding was that we would not use the fair
4 value as a proxy for adjustments on fixed assets at
5 this point. This should have been reflected here
6 because we wanted to go ahead and do the value in
7 use analysis comparables and then do the
8 impairments so it was not in a way that we were
9 just throwing the number out as seems from the
10 minutes and as seems from the footnotes, which as I
11 mentioned, I believe was conflicting.

12 Q. We will come back to the footnote as
13 soon as we get the copies.

14 MR. MUSTOKOFF: Let me introduce Cunha
15 14, which is a letter dated June 2, 2014
16 authored by Mr. Cunha.

17 (Cunha Exhibit 14, Letter dated June 2,
18 2014 from Mr. Cunha, was so marked for
19 identification, as of this date.)

20 MR. MUSTOKOFF: The next exhibit, Cunha
21 15, is a letter from Ms. Foster dated
22 June 27, 2014.

23 (Cunha Exhibit 15, Letter from Ms.
24 Foster dated June 27, 2014, was so marked
25 for identification, as of this date.)

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2 MR. LIMAN: Do you have English
3 translations?

4 MR. MUSTOKOFF: I do not.

5 MR. LIMAN: Let the record reflect my
6 objection continuing.

7 Q. Mr. Cunha, before I ask you about these
8 two documents, turning back to the January 27, 2014
9 board meeting, who decided to revert back to using
10 the 3 percent methodology?

11 MR. LIMAN: Objection to the form.

12 A. It was a decision of the majority of the
13 board led by the chairman.

14 Q. Thank you. What was PWC's view on that
15 at that time?

16 A. I don't recall. To my recollection
17 PWC's opinion on this approach changed with time.
18 I would have to review all the minutes again but my
19 recollection is that PWC initially stated that such
20 an approach was unacceptable because it lacked
21 objectiveness, but then later agreed to it.

22 Q. Do you know why PWC changed its mind
23 regarding the 3 percent methodology?

24 A. No.

25 MR. DAHAN: Objection to form.

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2 A. I don't know.

3 Q. Did Ms. Foster agree with the 3 percent
4 methodology at this time?

5 A. I believe she did.

6 Q. How about Mr. Barbassa?

7 A. I believe he did too.

8 Q. Okay. You have just been handed Cunha
9 14 and 15. Can you describe these two documents?
10 Do you recognize these two documents?

11 A. Yes, I do.

12 Q. What are they?

13 MR. LIMAN: Objection, compound.

14 A. This is correspondence initially a
15 letter from me to the board dated June 2 on the
16 subject matter of the capital expenditure approval
17 process, and the second one is CEO Foster's
18 response to it.

19 Q. Could you describe the contents of your
20 letter to Ms. Foster?

21 A. I will go back to something I said
22 previously. Upon the approval of the capital
23 expenditure program I had serious reservations as
24 to what was being decided back then, and going back
25 even further, it became clear to me that we had a

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2 problem in terms of the limitation of how do you
3 say.

4 THE INTERPRETER: Responsibility.

5 A. Yes, the responsibility thresholds for
6 management. The bylaws stated that we needed to
7 set these limits every year, and during the course
8 of 2013 it became clear to me that those limits had
9 not been deliberated upon since 2002. So in
10 November there has been a decision on that but the
11 limits that were approved contained what I deemed
12 to be a flaw, meaning that the limitation on
13 capital expenditures was in the case of investments
14 made in the national -- in the five-year business
15 plan, the P&G, were considered to be fully approved
16 when you approved the five-year plan, so the
17 consequence of it is that the approval of the
18 five-year plan provided management with a sort of a
19 blank check to the tune of \$50 billion a year which
20 was more or less divided in areas in projects but
21 with a very large degree of discretionary power to
22 move those investments along.

23 Q. Is that 50 billion U.S.?

24 A. Yes. So in my understanding this meant
25 that the board was resigning from its fiduciary

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2 duty of overseeing management and applying the
3 limitation that the bylaws intended us to do and
4 the law certainly intends us to do and just gave
5 that blank check. So when we add both things, the
6 way the limitation was established in these
7 thresholds and the data that was provided in
8 February to approve the capital expenditure
9 program, again as I mentioned I felt overwhelmed in
10 February. I abstained from voting.

11 I gave it further thought and later
12 concluded that there was no possible way in which a
13 board could discharge its fiduciary duty by
14 approving and I said 50 billion, sorry,
15 \$42.3 billion in investments without specification
16 of return rates on an individual project basis or
17 any sort of control whatsoever.

18 So that is the crux of my letter, and on
19 the footnote I mentioned that basically if I knew
20 then what I knew then now on the date of this
21 letter, my vote in relation to the P&G would be no
22 instead of abstaining and that I urged the board to
23 review the decision.

24 Nothing was done to that respect and CEO
25 Foster in the end of June sent me this letter with

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2 some very nice responses, but which in my opinion
3 did not address the basic flaw, which is the board
4 was simply giving management a blank check.

5 Q. Mr. Cunha --

6 MR. LIMAN: Let me make a continuing
7 objection to the use of 14 and 15 without
8 providing an English translation. Can I
9 have that continuing objection?

10 MR. MUSTOKOFF: Yes, you can.

11 MR. LIMAN: Thank you.

12 Q. Before we get on to Ms. Foster's
13 response, could you read the contents of footnote 1
14 from your letter?

15 A. Sure.

16 THE INTERPRETER: "I register that
17 understanding, the understanding that I have
18 today, with the understanding that I have
19 today of the documents submitted and the
20 minutes of our meetings, my vote in meeting
21 1,390 would have been for the non-approval
22 of P&G. I know that it is not possible to
23 change a vote or that are already registered
24 in minutes, but I would like to register
25 here my present opinion on the topic in lieu

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2 of information that I could obtain later. I
3 urge that the board sees again the decisions
4 in question."

5 MR. MUSTOKOFF: Thank you.

6 A. Revisits the decisions.

7 Q. What was the nature of Ms. Foster's
8 response to you?

9 MR. LIMAN: Objection to form.

10 A. The answers were in my opinion did not
11 address my points. She disagreed of my opinion
12 that the board was not fulfilling its duty, and I
13 mean we had different opinions. To her credit,
14 after this exchange we had several discussions on
15 the capital expenditure process and the board's
16 involvement in it, and as a result of that after
17 November 2014 the board started to receive to my
18 knowledge for the first time ever reports on the
19 evolution of critical projects and to which extent
20 they were deviating from budgets both from a
21 financial and a physical point of view, so that was
22 a positive development, and if I recall it
23 correctly, it was in the November meeting. And I
24 registered that that was a historical meeting
25 because for the first time the board was receiving

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2 information on the cap ex projects.

3 Q. So prior to this point in November 2014
4 the company was operating under this sort of blank
5 check regime as you described?

6 MR. LIMAN: Objection.

7 A. Yes. Allow me to add that new
8 information confirmed my opinions both on this
9 exchange and on the exchange related to RNEST. A
10 couple of weeks ago in the Brazilian newspaper
11 Valor Economico there has been a series of reports
12 based on documents that were leaked from the
13 company that confirmed with a lot more detail than
14 I had access to that yes, the company approved
15 investments with negative present value, yes, the
16 company had information on the evolution of capital
17 expenditures that the board had no clue about, and
18 that the company as a consequence destroyed a lot
19 of value because of the way its decision-making
20 process for capital expenditures were made.

21 The journalist offered the documents to
22 me but I declined, but these documents are
23 available, are out there and are relevant for that
24 discussion in my opinion.

25 MR. LIMAN: Objection. Move to strike

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2 based on hearsay and non-responsiveness.

3 Q. Turning back to your letter, Mr. Cunha,
4 Exhibit 14, on page 3, the bottom of page 3 there
5 is a paragraph that begins (Portuguese). Do you
6 see that?

7 A. Okay.

8 Q. Could you read that sentence, please,
9 that paragraph.

10 THE INTERPRETER: "I also understand
11 that these may have been exactly the same
12 problem which made possible the company to
13 execute projects that ended causing
14 multiples of the values initially budgeted,
15 and if this type of decision continues, we
16 will continue to be subject to these type of
17 problems without the board being able to do
18 anything before it is too late and the
19 consequences of legal responsibilities for
20 actions and/or omission."

21 Q. Could you explain what you were trying
22 to convey there, sir?

23 A. Yes, it has to do with the previous
24 paragraph which mentions that the board was
25 basically being blind to what was going on in the

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2 capital expenditure procedures and basically
3 resigning from its supervision duties.

4 (Cunha Exhibit 16, e-mail from Mr. Cunha
5 to board of directors dated March 6, 2015,
6 was so marked for identification, as of this
7 date.)

8 MR. MUSTOKOFF: The witness has been
9 handed Exhibit 16, which is an e-mail from
10 Mr. Cunha to the board of directors dated
11 March 6, 2015.

12 Q. Do you recognize this document?

13 A. A series of documents, yes. The
14 document per se is not something that I received.
15 It was sent by the new secretary of the board Joao
16 Gabriel to a number of people in finance and
17 accounting as I recognize, and it is basically
18 forwarding messages written by both board member
19 Monforte and myself to the CFO mentioning our
20 disagreement with the methodology of attaching
21 3 percent of the contract as corruption payments.

22 Monforte attaches news saying that some
23 of these corrupt payments allegedly went above
24 3 percent. Irrespective of whether they were above
25 or below 3 percent, it is just to show the lack of

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2 objectivity on the number and therefore on the
3 accounting adjustment.

4 Q. This article describes an individual
5 named Renan, correct?

6 A. Yes.

7 Q. Who is Renan?

8 A. Chairman of the Senate.

9 Q. What is this article describing?

10 MR. LIMAN: Objection.

11 A. Basically it describes corruption
12 payments to Mr. Calheiro that were alleged above
13 3 percent.

14 Q. What was the reason for forwarding this
15 article to the board?

16 A. Again, we were not in agreement with the
17 decision to register the 3 percent as a corruption
18 expense on the financial statements. We were
19 showing lack of objectivity, and in my message I
20 claimed that when we read the company's intention
21 to make that accounting registration and words from
22 member of the government that were seeking ways to
23 enter into agreement with the suppliers involved, I
24 was very much concerned that this was a concerted
25 effort to find a solution and a final number that

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2 would be affordable to the suppliers to reach an
3 agreement with the government, pay a fine and
4 revert to business as usual.

5 Q. Did there come a time when the board of
6 directors voted on whether to approve the year-end
7 2014 financial statements?

8 A. Yes.

9 Q. When was that?

10 A. It was sometime in March 2015. Yes.
11 Maybe March 28, 2015.

12 Q. Take a minute to review if you would,
13 sir, the minutes. We are going to enter this as
14 Cunha 17. These are the board minutes from the
15 April 22, 2015 board meeting, and take a minute to
16 review the document.

17 (Cunha Exhibit 17, Minutes from
18 April 22, 2015 board meeting, was so marked
19 for identification, as of this date.)

20 Q. Having reviewed this, does this refresh
21 your recollection as to when the company or the
22 board voted on the 2014 year-end financial
23 statements?

24 A. Sorry. The question again?

25 Q. Yes. Having reviewed this document,

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2 does this refresh your recollection --

3 A. Yes.

4 Q. -- as to when the company or the board
5 voted on the 2014 year-end financial statements?

6 A. Yes.

7 Q. When was that?

8 A. That was April 22.

9 Q. Before we get into this meeting, let's
10 go back to January, and I have just handed the
11 court reporter the Form 6-K dated January 27, 2015.

12 (Cunha Exhibit 18, Form 6-K dated
13 January 27, 2015, was so marked for
14 identification, as of this date.)

15 Q. Do you recognize this, sir?

16 A. Yes, I do.

17 Q. I don't want to mischaracterize your
18 testimony, but I believe -- excuse me. I don't
19 want to mischaracterize your testimony, but I
20 believe you testified earlier that the footnote in
21 this press release lacked transparency. Wasn't
22 that right?

23 A. Yes.

24 Q. Could you show me, could you point the
25 footnote out and explain the basis for your belief

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2 that it lacked transparency.

3 A. Okay. In general terms, footnote 3.3
4 and more specifically footnote 3.3.3. Page 12.

5 Q. Could you elaborate, please.

6 A. When we read this note and starting with
7 the title, "Approaches considered by the company
8 but not adopted," this is where we see the
9 88 billion reais number, and my main concern here
10 is again using the same expression I used before,
11 the number of but's and if's surrounding the number
12 that brought more confusion to the marketplace than
13 cleared the matter.

14 This is also very much clear when we
15 read analyst reports from this period who basically
16 did not understand what the company was trying to
17 say.

18 MR. LIMAN: Objection. Move to strike
19 the end of that answer.

20 Q. Would you please point out the passages
21 in here that you believe lacked transparency.

22 A. Well, starting with the title of 3.3.3,
23 "Approaches considered by the company but not
24 adopted," so it mentioned we had not adopted the
25 fair value yet because we needed to do the

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2 impairment test. When we see the explanation on
3 item B, we see a number of explanations and
4 possibilities for that number that in my
5 understanding basically turned the information into
6 something very opaque.

7 In essence, the 88.6 billion number is
8 buried here amid a number of disclaimers that
9 didn't help much to understand what we were trying
10 to do, and I think it is important at this point to
11 refer to my vote on the audited statements.

12 Q. You are referring to the April vote?

13 A. Yes, in the meeting.

14 Q. Let's turn back to those minutes.

15 A. Okay. You want to go over it first and
16 then we will talk about the vote, because the vote
17 has to do with the disclosure of this number as
18 well.

19 Q. Let me ask you was PWC present at this
20 meeting on April 22, 2015?

21 A. Yes, they were. Not in its entirety.

22 Okay?

23 Q. Please describe what you recall about
24 the vote.

25 MR. LIMAN: We are talking about

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2 April 22?

3 MR. MUSTOKOFF: Yes. I am talking about
4 the vote for approval of the 2014 year-end
5 financial statements at the April 22 board
6 meeting.

7 A. So initially we had a number of
8 presentations and we were presented with the
9 financial statements, which were more than 400
10 pages long, and asked to vote on it. So precisely
11 the same manner that happened in the previous year,
12 which in itself would be enough to warrant at least
13 an abstention.

14 The company insisted on the hedge
15 accounting policy, which I believed and continue to
16 believe is wrong, and the company did undertake an
17 impairment test. We did have more opportunities to
18 interact with management than in 2013, but I was
19 not satisfied with the data that I was given.
20 Again, I was not given the spreadsheets calculating
21 that impairment test despite very large number of
22 requests.

23 The data we did see including discount
24 rates looked to me as being inadequate for the risk
25 profile of Petrobras and looking at practices of

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2 other companies. The company also insisted on
3 treating all its refineries as a single
4 revenue-generating unit. Again even knowing that
5 we had an 88 billion difference to fair value, the
6 company has opted for not being more conservative
7 and analyzing plants individually even though as we
8 have seen from the Abreu e Lima discussion, the
9 company was very much able to analyze its
10 individual refineries on an individual basis.

11 Q. And this was the issue that you had
12 first raised 14 months prior at the audit committee
13 meeting, correct?

14 A. Exactly.

15 Q. So 14 months later there still had been
16 no modification of that accounting policy?

17 A. Correct. And in this time frame we
18 found out this 88 billion reais difference and
19 still decided not to change the way we did things.
20 Now what was particularly concerning to me and here
21 my opinion on the year-end statements and on the
22 third quarter results need to be looked in
23 conjunction, is that what we have seen was a
24 significant impairment including the corruption
25 adjustments which we have talked about, but

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2 interestingly the lion's share of that impairment
3 was blamed on decisions taken over the fourth
4 quarter of 2014 and the first quarter of 2015,
5 namely the decision to stop work on the second line
6 of Abreu e Lima, the decision to stop work on
7 COMPERJ and a drop in oil prices.

8 I had strong disagreements about it
9 first because the drop in oil prices shouldn't
10 affect downstream assets that much and the lion's
11 share of the adjustment was in downstream, but also
12 because that left impression that all of the
13 adjustments were due to facts that happened after
14 September 30, 2014, whereas BNP and Deloitte were
15 telling us on September 30, 2014 we had an
16 88 billion reais problem, so I had very strong
17 disagreements about that.

18 I had to write my vote in a very hurried
19 manner because the CFO was already at the press
20 room to disclose the numbers, and I had to write my
21 vote very fast, so had I had more time I would be
22 able to better explain my views on the vote. I
23 believe it is pretty much there. The reason why I
24 still believe that the impairment was not precise,
25 but this reading in conjunction with the third

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2 quarter is important, because in my opinion it
3 basically reiterates the fact that I was wrong to
4 vote against the 2013 statements.

5 Q. You just referred to in your testimony a
6 significant impairment, significant impairments
7 including the corruption adjustments?

8 A. Excuse me. I meant right.

9 Q. In your testimony just now, in your
10 answer you referred to significant impairments
11 including corruption adjustments. What are you
12 specifically referring to?

13 A. The 3 percent.

14 MR. MUSTOKOFF: We can take a break.

15 THE VIDEOGRAPHER: The time is 4:36 p.m.

16 We are off the record.

17 (Recess taken)

18 THE VIDEOGRAPHER: The time is 4:54 p.m.

19 We are back on the record.

20 BY MR. MUSTOKOFF:

21 Q. Mr. Cunha, prior to the break you
22 testified that the 88 billion reais was due to
23 events that occurred prior to September 30, 2014,
24 correct?

25 A. Correct.

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2 MR. LIMAN: Objection.

3 Q. Is part of that 88 billion reais
4 attributable to the overpricing that occurred as a
5 result of the cartel?

6 MR. LIMAN: Objection, foundation.

7 A. I have to agree with parts of what the
8 company said, that the 88 billion is attributable
9 to a large number of things. First and foremost I
10 think it is attributable to the very bad
11 decision-making process regarding cap expenditures
12 that I just described. Second, if there was
13 corruption, and it seems that there was, certainly
14 that decision-making process was instrumental in
15 allowing corruption to happen. But in my opinion
16 it is virtually impossible to extricate what is the
17 amount of corruption, what is the amount of bad
18 decisions and so forth. One thing leads to the
19 other.

20 Q. Well, the prior capital expenditures
21 that you testified about, those were related to the
22 cartel, correct?

23 MR. LIMAN: Objection to form and
24 foundation.

25 A. I don't know what you mean precisely by

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2 that. What do you mean by the cartel?

3 Q. Well, the projects that arose as a
4 result of the cartel doing business with the
5 company.

6 MR. LIMAN: Objection.

7 A. The full portfolio of capital
8 expenditure of very large cap expenditures that
9 Petrobras did and most of which was contracted with
10 the firms that are being investigated in the
11 criminal proceedings.

12 Q. Now you testified that Abreu e Lima, for
13 example, was inflated by \$2.3 billion as of 2013,
14 right?

15 MR. LIMAN: Objection, misstates the
16 testimony. Use --

17 A. 2.3?

18 Q. Yes. Am I incorrect?

19 A. No, we are talking about many numbers
20 about Abreu e Lima. What I did tell you was the
21 original budget was \$4 billion and ended up costing
22 north of \$20 billion. If you read my vote on the
23 2014 statements, you will see that I had an
24 estimate that Abreu e Lima was registered on the
25 financial statements at more than 30 times EBITDA,

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2 and after the adjustments came to something like 22
3 or 27 times EBITDA, which was still very, very
4 large. So I wouldn't be able to say by how much
5 exactly Abreu e Lima was or is overstated, but the
6 number is still large.

7 Q. Let's turn to your vote which is part of
8 the document you have in front of you, the minutes.
9 If you turn to page with the Bates number 768757.

10 A. Okay.

11 Q. You see in the middle of the page it
12 reads "Statement of vote of Director Mauro
13 Rodrigues da Cunha in the meeting of the Petrobras
14 board of directors on April 22, 2015." Do you see
15 that?

16 A. Yes.

17 Q. Then you list what appears to be four
18 reasons for your negative vote against the
19 financials, correct?

20 A. Correct.

21 Q. Timeliness, test of asset impairment,
22 the release of amounts of fraud or corruption and
23 hedge accounting. Correct?

24 A. Correct.

25 Q. Okay. Could you please walk us through

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2 each of these, well, why don't you walk us through
3 the first of these reasons entitled "Timeliness"?

4 A. Timeliness, as I mentioned, and here it
5 is more precise, we received at 11:40 a.m. 319
6 pages of documents, I had previously said north of
7 400, I stand corrected, and it was most directors
8 didn't even open the package and voted on it
9 anyway. So I believe this is not a reasonable
10 process to approve financial statements.

11 I also deal with a number of
12 information, a number of pieces of information that
13 we requested and that were not delivered.

14 Q. On the top of the next page, if you look
15 at the next page, there is a chart. Could you
16 describe what is identified in this chart?

17 A. It begins on the previous page and goes
18 on.

19 Q. Yes.

20 A. This is a small sample of requests of
21 information that were not fulfilled. Notably
22 related to the impairment tests.

23 Q. Now under the chart we have the heading
24 "Test of Asset Impairment." Do you see that?

25 A. Sorry. Where?

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2 Q. Number 2. "Test of Asset Impairment."

3 A. Yes.

4 Q. Could you just read the first sentence
5 underneath that heading.

6 A. Sure.

7 THE INTERPRETER: "Last year I expressed
8 the apparent inappropriateness of accounting
9 of investment at the refineries and I repeat
10 my vote this year."

11 Q. So from 2014 to 2015 in your view there
12 had been no change in the accounting for these
13 assets, correct?

14 A. That's correct. And as a matter of
15 fact, the data that came out between '14 and '15
16 simply proved that my view was correct.

17 Q. In what way?

18 A. That the amounts were overstated.

19 Q. Which data are you specifically
20 referencing?

21 A. Starting with the fair value analysis.

22 Q. The analysis conducted by Deloitte &
23 Touche?

24 A. Yes. And also the investigations that
25 seemed to increasingly suggest that large

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2 inappropriate payments were made in that project.

3 Q. So is it your view that those
4 inappropriate payments comprised a portion of the
5 88 billion reais?

6 MR. LIMAN: Objection, vague. Objection
7 to form.

8 A. Let me refer to a sentence that is here
9 on my vote, which is, and I am reading Portuguese.

10 THE INTERPRETER: "The size of the
11 disagreement between the fair value and the
12 accounting value, even if you don't use it
13 for an accounting entry immediately in the
14 terms of CPC 01, it became clear that there
15 was something very wrong in the parameters
16 used by the company to execute the
17 impairment test until then."

18 Q. Could you read the next sentence,
19 please, sir.

20 THE INTERPRETER: "What we see at this
21 moment is the presentation of an entry, of
22 an impairment entry that in my opinion has
23 no relation to the dimension of the
24 overstatement of our assets."

25 Q. What were you trying to convey there,

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2 sir?

3 A. I was trying to convey that what I
4 expressed previously in perhaps more detail than I
5 wrote in a rush during this vote. The next
6 paragraph says clearly that management was blaming,
7 quote unquote, a large part of the adjustment on
8 the decisions taken recently suggesting that there
9 was no such overvaluation in 2013, and I did not
10 agree with that.

11 Now very, very importantly, I would like
12 to call your attention to the last sentence on the
13 next paragraph when I refer to this documents DIP
14 12/2015, which is one of the documents that was not
15 sent to me on the table above. I don't know if you
16 have that document, but in essence it was a
17 specific request of the departing CEO Foster saying
18 that if we are not going to do an impairment that
19 is based on this fair value, she would like to see
20 the calculations that explain how do you depart
21 from the 88.6 billion to the number that we are
22 recognizing on the balance sheet.

23 That was to my knowledge never done, and
24 my understanding is that at this point CEO Foster
25 was very much concerned to be as forthcoming as

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2 possible with the true data that the company needed
3 to disclose. Remember that when we disclosed these
4 statements, the CEO was already Mr. Bandine. That
5 calculation coming from one point to another was
6 never brought to management, brought to the board.

7 Q. When was Mr. Bandine installed as the
8 new chief executive officer?

9 A. It was in the first quarter of 2015. I
10 don't recall the exact date.

11 Q. Was Mr. Bandine's election put to a vote
12 by the board?

13 A. Mr. Bandine was acclaimed CEO before the
14 vote. When we convened to discuss the resignation
15 of management before the chairman suggested the
16 name of Bandine, I called the attention on the
17 first page of Folha de Sao Paulo, it stated that
18 Mr. Bandine was the new CEO of Petrobras. That was
19 a particularly interesting meeting in which we
20 requested CVs of the appointed executives. They
21 were provided on the spot. Again, directors didn't
22 even look at it.

23 I remember that Chairman Mantega didn't
24 even remember the last name of the CFO. That is on
25 the audio of the meeting, and that led to a protest

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2 that once again, the company was appointing
3 officers without a proper diligence.

4 Now around the same time we were
5 receiving information from Mr. Sinedino that
6 Petrobras was making bad appointments to the board
7 of Petros, the pension fund controlled by
8 Petrobras, and namely that there was one particular
9 officer of Petros that had no experience in
10 managing a pension fund. He was an oil fuel
11 operator. So we had a discussion on that which is
12 not reflected on the minutes. It happened on that
13 meeting of January 25 that was chaired by Mr.
14 Continho. Mr. Mantega was not present, and in the
15 audio of that meeting CEO Foster said that the
16 appointments for Petros were received from Mr.
17 Mantega and she basically signed off on the names
18 without further inquiry.

19 So both in the appointments of the
20 directors of the pension fund, which is also
21 posting losses in the tens of billions of reais,
22 and the appointments of the C level executives of
23 Petrobras, we didn't see the board of directors
24 making any serious efforts to perform any diligence
25 at all.

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2 MR. LIMAN: Move to strike.

3 Q. Did you have any discussions with any of
4 your fellow board members to the effect that there
5 should be a vote for Mr. Bandine's election or was
6 it too late?

7 A. There was a lot of complaining. There
8 was a vote, and myself, Monforte and Sinedino voted
9 against it.

10 Q. Turning back to your written vote
11 against the financials, after the sentence where
12 you say that you cannot agree with this approach
13 for the impairment, the next paragraph talks about
14 EBITDA. I think you made a reference to that
15 earlier.

16 A. Yes, 27 times.

17 Q. Can you please explain what you are
18 referring to here?

19 A. Well, when we looked at the amount of
20 the investments of Abreu e Lima on the balance
21 sheet and we compared that to a regular level of
22 EBITDA when the company was already after the
23 ramp-up we are talking about 27 times. After the
24 impairment it was to 22 times. So it doesn't
25 necessarily say that the number is wrong, but it is

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2 an indicator that something doesn't look very
3 correct. And again, this should have suggested to
4 management that the impairment was still not enough
5 as we have seen on the financials of 2015.

6 MR. LIMAN: Objection. Move to strike
7 the last part of that answer.

8 Q. Now a few lines down you say that you
9 had requested again tables of analysis. Is that
10 right?

11 A. Yes, the spreadsheets.

12 Q. And you never received the spreadsheets?

13 A. Correct.

14 Q. As a result you felt that you were not
15 informed enough to vote on the financials?

16 A. Yes, not only that. I mean I had many
17 indications that we had problems with the numbers
18 and I was not given the data to give me comfort, so
19 my vote was against the financials.

20 Q. On the next page, sir, you make
21 reference to the company's adoption of a market
22 risk rate at a level lower than the samples. Do
23 you see that?

24 A. Where is that?

25 Q. I'm sorry. It is the paragraph

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2 beginning with the words "On these facts."

3 A. Okay. So your question is?

4 Q. Yes, there is a reference to the
5 company, you say that the company adopted a market
6 risk rate at a level lower than samples.

7 A. Um-hum.

8 Q. Could you elaborate what you are
9 referring to here?

10 A. In two meetings we had hosted by the
11 CFO, we saw some presentations on the reasoning
12 behind some of the assumptions, and so with the
13 limited data we did receive, we could already see
14 that the company was not opting for the more
15 conservative alternatives but rather pushing to the
16 discount rate that would lead to the smallest
17 possible adjustment.

18 Q. The next section of your letter or your
19 vote is titled "Release of the Amounts of Fraud Or
20 Corruption." Do you see that? Item number 3.
21 Take a minute to review that if you would.

22 A. Okay.

23 Q. Could you summarize -- well, strike
24 that. Are these the reasons why you believed the
25 3 percent methodology to be inadequate?

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2 A. Yes. I have to say that we did receive
3 information from management that the SEC was
4 signaling in a positive way to that decision,
5 something I could not attest because I had
6 requested the documentation and did not receive,
7 and as I had seen in other situations, there can
8 always be legal opinions or reports that points in
9 a given direction in theory but when applied to the
10 real life situation might not necessarily hold.

11 So I was concerned that this would be
12 the case. I didn't have again the data, the
13 letters, whatever the SEC said, I didn't even have
14 a chance to read the footnotes that describe what
15 had been done, so I was very much worried that we
16 should publish the financial statements as soon as
17 possible so I could have been convinced that this
18 was the best route, and that is why I say that in
19 itself this item could not have been a reason to
20 vote against the financial statements, but in
21 essence I felt the approach was wrong, and it was
22 even wrong according to the legal opinion of one of
23 the law firms that was hired to discuss it.

24 MR. LIMAN: I am going to move to strike
25 the last bit and ask the witness not to

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2 disclose any advice of counsel.

3 A. It is written here.

4 MR. LIMAN: I move to claw back that
5 portion and move to strike the testimony
6 with respect to the lawyers, the advice that
7 the company received is privileged.

8 THE WITNESS: Okay.

9 MR. LIMAN: Thank you.

10 MR. MUSTOKOFF: I would note to the
11 extent that is reflected in the document
12 that privilege is waived as this is a
13 publicly filed document.

14 MR. LIMAN: We disagree.

15 Q. Mr. Cunha, you say it is the third
16 paragraph under the heading under the release of
17 amounts of fraud or corruption, you say that
18 Petrobras was a victim of the corruption done by
19 third parties. Do you see that?

20 A. Yes.

21 Q. I would like to ask you about that
22 statement. When you say that Petrobras was a
23 victim, you are not referring to the members of the
24 executive directorate that were complicit in the
25 corruption, are you?

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2 MR. LIMAN: Objection to form.

3 A. No, I am saying the firm.

4 Q. And you are not referring to the members
5 of the board of directors who approved the
6 investments in Abreu e Lima and COMPERJ, are you?

7 MR. LIMAN: Objection to form.

8 A. No, I mean the firm.

9 Q. In your view, sir, were the shareholders
10 of Petrobras victims?

11 A. I believe they were.

12 Q. In what way?

13 A. Well, I believe as a result of not only
14 corruption but the whole decision-making framework
15 that was put in place that allowed corruption to
16 happen, investors suffered severe losses as
17 measured by the share prices of Petrobras.

18 Q. If you turn to the second to last
19 paragraph under the fraud and corruption section of
20 the document, the sentence that begins "We received
21 various opinions," could you just read the
22 beginning of that paragraph. The first three
23 sentences.

24 THE INTERPRETER: "We received several
25 opinions requested by the company throughout

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2 this process. All of them of those that I
3 received, none of them made reference to
4 values or exact methods of adjustment with
5 independent verification."

6 A. So if I may, this is precisely what I
7 said before. I make reference to opinions received
8 in theory which did not necessarily apply to the
9 real case. And as we move down this paragraph, we
10 see that maybe the most important document was
11 being withheld from the board under the pretext
12 that they were confidential, and in a situation of
13 this gravity saying that directors could not have
14 access to correspondence between the company and
15 the SEC sounded particularly bad to me.

16 Q. Mr. Cunha, who was Professor Martins?

17 A. He is a very prominent accounting
18 professor at University of Sao Paulo.

19 Q. Was he retained by the board of
20 directors at some point?

21 A. I understand that he offered his opinion
22 free of charge to Petrobras in this matter.

23 Q. What was the nature of his opinion?

24 A. It was regarding the methodology for
25 accounting for the refining units.

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2 Q. What was the methodology that he
3 proposed?

4 A. We have his opinion in the end.

5 Q. Yes, his opinion if you want to
6 reference it, it actually begins on page 768, 764,
7 it is appended to the board minutes.

8 A. Correct. This is one example of an
9 opinion in theory that would be up to the board to
10 apply to the real case. That is my understanding.

11 Q. Was this methodology adopted by the
12 board?

13 MR. LIMAN: Objection to form.

14 A. As a matter of fact, we have to take
15 into account that this opinion was also submitted
16 to the board on the spot and not a single director
17 had the time to read it, so is this what led the
18 board to take the decisions what it took, no, it is
19 not, because it would not be feasible for the
20 directors to read it.

21 Was it what management based upon to
22 make the accounting adjustments? I believe it is.
23 But again the opinion is in theory, not in the real
24 case.

25 Q. Was there a time when you wanted to

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2 retain Professor Martins to do an analysis on
3 behalf of the independent directors?

4 A. I don't recall.

5 Q. You testified before the CPI, correct?

6 A. Yes.

7 Q. When was that?

8 A. April 26, 2015.

9 Q. Did you testify under oath?

10 A. Yes.

11 Q. Do you stand by your testimony to the
12 CPI?

13 MR. LIMAN: Objection to the form.

14 A. Yes, I do.

15 Q. I would like to show you your testimony.

16 (Cunha Exhibit 19, Mr. Cunha's testimony
17 of April 26, 2015, was so marked for
18 identification, as of this date.)

19 Q. So we will mark this as Cunha 19. When
20 was the last time you reviewed your testimony?

21 A. A long time ago.

22 Q. But you maintain that everything you
23 said was truthful?

24 MR. LIMAN: Objection.

25 A. Yes.

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2 Q. Let me turn your attention to page 84,
3 and this is a discussion regarding your removal
4 from the audit committee. Do you see that?

5 A. Yes.

6 MR. LIMAN: Where are you referring to,
7 Counsel?

8 MR. MUSTOKOFF: I am on page 84.

9 MR. LIMAN: There is a lot of stuff
10 there.

11 Q. There is a large discussion that takes
12 up most of the page regarding Mr. Cunha's removal
13 from the audit committee. Toward the bottom of the
14 page there is a sentence that begins "The
15 independence of the body disappeared." Do you see
16 that?

17 A. Yes.

18 Q. Could you read that sentence in full.

19 THE INTERPRETER: "Therefore the
20 independence of the entity disappear exactly
21 at the time that independence was revealed
22 to be most important for Petrobras."

23 Q. Mr. Cunha, what did you mean by that
24 statement?

25 A. Precisely the same thing I said before,

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2 independence is always important, especially at the
3 audit committee, in a time when Petrobras was under
4 investigation by everything that was going on. It
5 was even more important and precisely at that
6 moment the chairman of the board eliminates
7 independence from the audit committee.

8 Q. If you turn the page, there is a
9 discussion in the middle of the page regarding
10 internal control structures. Do you see that?

11 A. Yes.

12 Q. There is a sentence that begins, it says
13 "These structures have failed." Do you see that?

14 A. Yes.

15 Q. I ask you to read your testimony
16 beginning with that sentence.

17 THE INTERPRETER: "The structures fail,
18 governance failed, we should understand how.
19 Petrobras has one of the most detailed and
20 complete governance systems that I have ever
21 seen. After being elected, I received the
22 document entitled 'Corporate Governance
23 Manual' with bylaws, rules, norms and
24 procedures that suggest a fantastic
25 governance. Unfortunately, this is so

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2 fantastic on paper. It was only fantastic
3 on paper. Many provisions were not complied
4 with. There were some gaps that were used
5 on purpose, viciously used, so that the
6 system did not function anymore in that
7 which was relevant. It was a form that
8 prevailed over the essence. Governance for
9 the Englishman to see," which is a Brazilian
10 expression.

11 Q. These are your words, right?

12 A. Yes.

13 Q. This was governance for only the English
14 to see. What does that mean?

15 A. This expression it turns out dates back
16 from the 16th or 17th Century, I believe, when --
17 maybe 18th when the English had certain rights over
18 gold that was produced in Brazil, and there was
19 something people did to suggest that there was gold
20 when there was not, so they put the gold for the
21 English to see but then the gold disappeared. So
22 that expression is very common in Brazil. In
23 essence we are talking about form over essence.

24 Q. Form over substance?

25 A. Yes.

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2 Q. Why was governance at Petrobras form
3 over substance?

4 MR. LIMAN: Objection to form and
5 misstates the testimony.

6 A. Because again, we are talking about a
7 very detailed system of procedures, rules, bylaws,
8 checks and balances which would pass the most
9 stringent analysis based on checking boxes, and it
10 was not even surprising that on March 2013 right
11 before I joined and when the problems were already
12 happening at Petrobras, Standard & Poor's evaluated
13 the governance system of Petrobras through such a
14 check the box approach and it was considered to be
15 one of the best in Latin America.

16 What happens is that, and we went
17 through a number of situations in which it
18 happened, the devil is in the detail in governance,
19 and when you have a system in which the boards
20 cannot have an opinion on very, very large
21 investment projects when people approve financial
22 statements without opening the documents, when you
23 have a whistle blowing channel that hasn't received
24 a single complaint of corruption amid everything
25 that went on, when you had accounting procedures

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2 that were canceled when they seemed to matter the
3 most, when you had decisions on financial
4 statements that were not necessarily the most
5 transparent, I could go on and on and on.

6 Q. Please do.

7 A. When we had a system of appointing
8 executive officers without any scrutiny by
9 directors, when there was no actual oversight of
10 the company both over the executives and the
11 decisions at the pension fund that manages billions
12 in employees' funds. When you had the CEO of a
13 subsidiary that the company was simply unable to
14 fire because the chairman wouldn't allow. These
15 are signs that governance wasn't working in essence
16 or in substance.

17 MR. LIMAN: Objection. Move to strike,
18 non-responsive and based on hearsay, among
19 other objections.

20 Q. You made reference in your testimony to
21 a whistle blowing channel.

22 A. Yes.

23 Q. That was ineffective, is that right?

24 A. Yes.

25 Q. Could you elaborate on that?

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2 MR. LIMAN: Objection. Hearsay.

3 A. Over the course of my stay at the audit
4 committee it was striking that we had not received
5 any significant information on corruption problems.
6 Throughout 2014 it struck me that I found the
7 answer, and that was that the person in charge of
8 the whistle blowing channel happened to be the
9 former aide of the chief of staff of government who
10 is now in jail.

11 Q. That is who?

12 A. That was Mr. Otto, Paulo Otto Spurling.

13 MR. LIMAN: Objection. Move to strike
14 this testimony on hearsay grounds.

15 A. From statements of board member Sinedino
16 repeatedly on the board and I believe on the
17 minutes, he said that employees of Petrobras didn't
18 feel safe by blowing the whistle, and it is
19 understandable if the channel is managed by people
20 who as we now see is implicated on the scandal.

21 Q. Mr. Spurling reported that employees
22 were afraid to --

23 A. No, Mr. Sinedino did.

24 Q. I see. Who is Mr. Sinedino?

25 A. Board member appointed by the employees.

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2 Q. What was the basis for that comment, do
3 you know?

4 MR. LIMAN: Objection.

5 A. His knowledge and talking to employees,
6 because that is what he did.

7 MR. LIMAN: Objection, move to strike.

8 Q. He spoke to employees in what
9 connection?

10 A. As their representative on the board.

11 MR. LIMAN: Objection. I should say Mr.
12 Sinedino reported situations in which
13 employees were discouraged to blow the
14 whistle in certain situations.

15 Q. During what time frame?

16 MR. LIMAN: Objection, vague.

17 A. In 2014.

18 Q. If you turn to page 93, at the bottom
19 there is a question from Representative Bruno
20 Covas.

21 MR. MUSTOKOFF: Ms. Interpreter, could
22 you translate the question from
23 Representative Covas.

24 THE INTERPRETER: Yes. "In exercising
25 his powers as a member of the board of

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2 directors and as part of the audit
3 committee, to review documents where you
4 could see the practice of illicit acts or
5 irregular acts within the context of the
6 Abreu e Lima refinery in Pernambuco."

7 MR. MUSTOKOFF: Thank you.

8 Q. On the next page, Mr. Cunha, you
9 answered the question. Could you read your
10 response?

11 THE INTERPRETER: "No. What jumped to
12 my eyes representative was the values
13 involved. From the moment I went in, it was
14 already clear that there was an investment
15 that was largely greater than the
16 international metrics. Whether there was
17 corruption or not, there was something very
18 wrong, which was already clear at that
19 moment related to how those investments were
20 made. Corruption looked to me or appeared
21 to me to be a consequence of that problem."

22 MR. BARROSO: The first word should be
23 "no," instead of "now."

24 Q. What did you mean by that, sir?

25 A. Well, I meant what I said before here.

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2 Corruption was a consequence of this
3 decision-making process that was not appropriate.
4 That is what I mean by how these investments were
5 made.

6 Q. And if you turn to page 97. Sorry, 98.
7 The second full sentence on that page beginning
8 with the words "In my understanding." Could you
9 read that, please.

10 THE INTERPRETER: "In my understanding
11 in verifying allegations of corruption, the
12 losses to Petrobras is not 3 percent of the
13 contract values, it is a different number,
14 and based on the eventual requests for
15 reimbursement, simply the number that was
16 brought to light by the ex-director or
17 ex-officer who is now in jail, we run the
18 risk of looking for values that are below
19 those owed to Petrobras."

20 Q. Do you stand by that testimony, sir?

21 A. Yes, I do.

22 Q. If 3 percent was not the correct number,
23 what is the correct number?

24 A. I don't know.

25 Q. Something higher than 3 percent?

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2 A. I don't know. It could be higher, it
3 could be lower.

4 MR. MUSTOKOFF: At this time I have no
5 further questions. Let's take a break.

6 THE VIDEOGRAPHER: The time is 5:42 p.m.
7 Off the record.

8 (Recess taken)

9 THE VIDEOGRAPHER: The time is 6:26 p.m.
10 We are back on the record.

11 MR. MUSTOKOFF: I will just note that
12 plaintiffs' counsel have reserved 37 minutes
13 of their time and will reserve that time for
14 redirect.

15 EXAMINATION BY MR. LIMAN:

16 Q. Good afternoon, Mr. Cunha. My name is
17 Lewis Liman. I didn't previously introduce myself.
18 It is my privilege to represent Petrobras and
19 through it its current shareholders, its current
20 employees. I am going to have a few questions for
21 you.

22 You may have noticed that during the
23 course of the plaintiffs' examination from time to
24 time I said things like move to strike. A judge
25 will sort that out later, but the reason why I did

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2 that was it was circumstances where I thought your
3 answers strayed beyond what the question was that
4 was asked, and I would ask you during the time that
5 I ask you questions just to answer the question
6 that I have asked.

7 A. Okay.

8 Q. And if for any reason you don't
9 understand one of my questions, please just tell me
10 to reask the question and I will do so.

11 I want to just start off by asking you
12 whether there came a time when you yourself learned
13 of allegations that there was a cartel of
14 contractors operating against Petrobras?

15 A. You are asking me when I learned?

16 Q. Yes.

17 A. That came from the media and the news of
18 the criminal investigations taking place.

19 Actually, this started, I think Pasadena was the
20 canary in the mine.

21 Q. Is it fair to say that you didn't know
22 about the existence of a cartel until Mr. Costa's
23 plea agreement was disclosed in the media?

24 A. That's correct.

25 Q. Sir, is it fair to say that to your

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2 knowledge, President Graca Foster also didn't know
3 about this cartel until the plea agreement was
4 disclosed in the media?

5 MR. MUSTOKOFF: Objection. That calls
6 for speculation.

7 A. My answer was going to be anyway I don't
8 know.

9 Q. Is it also fair to say that you don't
10 have any knowledge that Mr. Barbassa knew about the
11 existence of the cartel prior to the disclosure of
12 Costa's plea agreement in the media?

13 MR. MUSTOKOFF: Same objection.

14 A. No, I couldn't tell.

15 Q. That is, you don't have any knowledge
16 that he knew about the cartel before it was
17 disclosed in the media?

18 A. I don't have any knowledge, that's
19 right.

20 Q. Now do you have Exhibit 19 in front of
21 you?

22 A. Yes, I do.

23 Q. Terrific. I wanted to ask you about
24 just a couple of clauses that plaintiffs' counsel
25 touched on but didn't ask you about. Would you

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2 turn to page 85.

3 A. Um-hum.

4 Q. And plaintiffs' counsel asked you about,
5 you have got the Portuguese in front of you, the
6 original exhibit, correct?

7 A. Um-hum.

8 Q. And there is a sentence you were asked
9 about having to do with form prevailing over
10 substance, correct? You remember being asked about
11 that?

12 A. Yes.

13 Q. Then there is a sentence after that that
14 in the English translation I have been provided
15 says "This process began to reverse in recent years
16 but much remains to be done." Do you see where I
17 am?

18 A. Yes.

19 Q. How does that read in the Portuguese?

20 THE INTERPRETER: "Petrobras went
21 through a process of unwinding of."

22 THE WITNESS: "Of triggers of
23 governance."

24 THE INTERPRETER: "Unwinding of triggers
25 of governance. This process started to be

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2 reverted in the last years but there is
3 still a lot to be done."

4 Q. When you said this process started to be
5 reverted in the last years, can you just elaborate
6 on what you were referring to?

7 A. Sure. My understanding is that to
8 understand the system of governance, we must
9 understand it from the beginning to the end. When
10 I joined the board, I through my board education
11 process, I tried to understand why Petrobras had
12 its existing system of governance, and in
13 particular I was interested in understanding the
14 nature of the collegiate decision-making process on
15 the management board.

16 I understand that this was established
17 by former CEO Reichstul in the early 2000's when
18 the governance of the company was restructured and
19 that system, as with anything in management, has
20 pros and cons. The pros are that you call all
21 members of executive management, you hold them
22 accountable for all decisions, and the con is that
23 this removes the personal involvement on each
24 decision.

25 So in the existing design of Petrobras,

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2 everybody is responsible. The stepping stone for
3 that system to work is that members of the
4 management board were educated on everything that
5 was brought to executive management, and that was
6 accomplished by the concept of the business
7 committee that had many configurations including
8 one called investment committee.

9 My understanding of this process is that
10 this involved executive managers from different
11 areas that would sign off on items that were going
12 to these collegiate meetings of the executive
13 board. What I understand is that during the
14 Gabrielli administration this committee ceased to
15 exist, and when that happened, the basic stepping
16 stone, as I mentioned, of that system of governance
17 fell apart.

18 So if you have the collegiate executive
19 board without that investment committee, you have a
20 situation in which every week these executive
21 directors were receiving items to decide upon and
22 they were not properly educated on the items or
23 they didn't have the sign-off from people in their
24 areas for those specific items.

25 What was reported by these executive

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2 directors is that they then had to rely on their
3 colleagues because they would not second-guess
4 every single decision, and this was particularly
5 true as Petrobras revved up its operations after
6 the presalt discovery, so what we have seen is that
7 as the company increased its operations immensely
8 we should have seen a respective increase on these
9 triggers of governance and what we saw actually was
10 that some of these triggers were dismantled.

11 That includes then the investment
12 committee that was not functioning. It included
13 situations like the whistle blowing channel that
14 didn't work. It included the levels of
15 authorization to executive management that were not
16 yearly revised as per the bylaws and so on and so
17 forth.

18 So that is what I meant by the unwinding
19 of the triggers. And when I mean that they were
20 starting to be reversed, it means that under the
21 Graca Foster administration some of these items
22 started to be addressed. So CEO Foster resumed the
23 meetings of the investment committees and reviewed
24 a number of protocols including in contracting as
25 we have seen through the works of the council

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2 fiscal, that were the correct decision of bringing
3 up internal controls up to speed.

4 So that was the movie that I was
5 witnessing as I stood on the board of directors,
6 and what I mention here to the CPI was that a lot
7 remained to be done.

8 Q. Thank you, sir. Is it, and don't take
9 this question the wrong way, but a fact-finder is
10 ultimately going to have to make decisions in this
11 case and it is important what is known based upon
12 personal knowledge, is it fair to say, accurate to
13 say that you were not at the company during the
14 Gabrielli administration?

15 A. That's correct.

16 Q. So what you know about that you have
17 learned secondhand or from others, is that right?

18 A. I learned that from my board education,
19 process, as I mentioned in the beginning.

20 Q. Thank you. Now what I want to do is
21 turn you to page 98 of the testimony. You had
22 mentioned earlier, I am going to ask you, sir,
23 about the sentence that reads "We run the serious
24 risk of seeking amounts lower than those owed to
25 Petrobras." Do you see that in the testimony?

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2 A. Yes.

3 Q. You had mentioned earlier in your
4 testimony that you had a concern that the 3 percent
5 figure would be used by contractors in the Lava
6 Jato investigation, this was your language, to
7 reach an agreement with the government, pay a fine
8 and revert to business as usual. Do you recall
9 giving that testimony?

10 A. Yes.

11 Q. Could you explain what you meant by
12 that?

13 A. What I am trying to convey to you here
14 is that this 3 percent methodology lacked objective
15 necessary, so in that respect it should not have
16 been used for accounting purposes. Again, here I
17 mention that the number could be different from
18 that and from the several conversations and
19 interactions we had and looking at what was going
20 on on the regulatory side, it seemed to make sense
21 that in order to get those plea bargain agreements
22 with the contractors, one needed a concrete number
23 that was affordable to these companies to make the
24 deal happen. So my understanding was that it was
25 very likely that these decisions were linked.

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2 Q. And you testified that you thought that
3 Petrobras was a victim, correct?

4 A. Yes, as an administrator of Petrobras,
5 that is the conclusion I had.

6 Q. And by Petrobras being a victim, the
7 people who were the shareholders at the time were
8 victimized as well, correct?

9 A. That is true.

10 Q. And is it accurate to say that at
11 various times while you were on the board, you were
12 an advocate of Petrobras taking action to try to
13 recover from the contractors who caused damages to
14 it?

15 MR. MUSTOKOFF: Objection.

16 MR. LIMAN: I will rephrase the
17 question.

18 Q. Is it accurate that at various times
19 while you were on the board, you were an advocate
20 of Petrobras trying to take action to try to
21 recover from the contractors?

22 A. Not only that. I understand that
23 recovering is part of what Petrobras needed to do
24 if it were a victim. It needed to hold those
25 responsible accountable, which means prosecuting

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2 the people who perpetrated damages and also taking
3 action against the contractors that which is
4 something that wasn't being done.

5 We had situations in which a contractor
6 was found guilty of overpricing and was able to
7 contract with a company on the same month as that
8 finding was reached.

9 Q. You know now there is a black list
10 against the contractors?

11 A. Yes.

12 Q. And do you know also that Petrobras has
13 been cooperating with the Brazilian federal police?

14 MR. MUSTOKOFF: Objection to form.

15 Q. Do you know that?

16 A. From media accounts, yes.

17 Q. Do you know Petrobras has been
18 designated as a victim by the Brazilian judge in
19 connection with those cooperation efforts?

20 MR. MUSTOKOFF: Objection.

21 A. From news pieces, yes.

22 Q. And did you as somebody -- withdrawn.
23 Did you view yourself as an advocate for the
24 shareholders of Petrobras while you were on the
25 board?

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2 A. All shareholders, yes, including the
3 controlling shareholder.

4 Q. I didn't mean to suggest otherwise. Is
5 it fair to say that one of the actions that you
6 thought Petrobras should take was to try --
7 withdrawn. Is it fair to say that it was your view
8 it would be in the interests of the shareholders to
9 be able to recover from the contractors?

10 MR. MUSTOKOFF: Objection.

11 A. That too, but certainly not only that.

12 Q. Right, and I take it it is also your
13 view that the folks who engaged in wrongdoing
14 should be held accountable?

15 A. Of course.

16 Q. And I am just trying to ask a simple
17 question. Did you have a concern that those who
18 engaged in wrongdoing might take this 3 percent
19 number and try to use it to argue that they
20 shouldn't pay the full amount of damages that they
21 caused?

22 MR. MUSTOKOFF: Objection to form.

23 A. The question was not necessarily that
24 they wouldn't pay the full amount but they would
25 have a concrete number in which they could anchor

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2 these plea bargains, and that number in itself was
3 not objective.

4 Q. I take it that the fact that they could
5 use a concrete number to anchor the plea bargains
6 was a matter of concern to you?

7 A. It was.

8 Q. And when you said in this testimony,
9 page 98, you see where it says "We run the risk of
10 seeking amounts lower than those owed to
11 Petrobras"?

12 A. Um-hum.

13 Q. Did I translate that accurately?

14 A. Can you repeat that.

15 Q. Sure. Did you say "We run serious risk
16 of seeking amounts lower than those owed to
17 Petrobras"?

18 A. That was a risk, yes.

19 Q. Okay. What was that specific risk?

20 A. That the number was different than
21 3 percent.

22 Q. Okay. And that as a result the company
23 would seek amounts lower than those that were owed
24 to it?

25 A. Yes. On the other hand if we eventually

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2 found out that the number was much lower than this
3 and we reported 3 percent, we would be understating
4 our assets. It would be equally wrong.

5 Q. By the way, was your view on the
6 accounting anchored in any specific accounting
7 literature?

8 A. I don't understand your question.

9 Q. Do you know what accounting rules govern
10 Petrobras?

11 MR. MUSTOKOFF: Objection to form.

12 A. IFRS.

13 Q. Was your view with respect to the
14 accounting anchored in any specific paragraph or
15 section of the IFRS?

16 A. I understand that IFRS is a
17 principle-based methodology and that decisions
18 regarding the true and fair view of the company
19 should not be focused on specific rules. Quite the
20 opposite. We have even the true and fair override
21 which states that when necessary, rules need to be
22 not applied if that conflicts with a true and fair
23 view.

24 So the objective in my mind was to
25 establish the true and fair view and I didn't see

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2 objectivity on the 3 percent number enough to say
3 that it would give a true and fair view as opposed
4 to the alternative, which in my opinion was to
5 arrive at the fair value of the assets.

6 Q. I want to ask you some questions about
7 that, but before I do, I am going to ask the court
8 reporter to mark as Cunha Exhibit 20 Petrobras'
9 2013 Form 20-F in the English, and I think if it
10 worked correctly, I will have as 21 the Portuguese
11 version.

12 (Cunha Exhibit 20, English version of
13 Petrobras' 2013 Form 20-F, was so marked for
14 identification, as of this date.)

15 (Cunha Exhibit 21, Portuguese version of
16 Petrobras' 2013 Form 20-F, was so marked for
17 identification, as of this date.)

18 Q. So you have got Exhibit 20 in front of
19 you. Do you recognize that as Petrobras' form
20 20-F as filed with the SEC on April 30, 2014 in
21 English?

22 A. Yes, I do.

23 Q. And do you recognize Exhibit 21 as the
24 Portuguese version of the 20-F?

25 A. Um-hum. It looks like it.

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2 Q. What I have done to make things easier
3 is on Exhibit 21 I had my colleague tab and
4 highlight the sections I want to refer you to and I
5 will mention it to others.

6 MR. MUSTOKOFF: Let me just note for the
7 record that plaintiffs' counsel does not
8 have the same iteration of the document with
9 the highlights and the tabs.

10 MR. LIMAN: So noted. I will tell you
11 what they are as we go.

12 Q. What I wanted to do is refer you to
13 page -- withdrawn. Before I ask you about the
14 document, you mentioned that you were elected to
15 the board of Petrobras when?

16 A. Initially on April 2013 and then
17 reelected I want to say April. It might have been
18 March 30 in one of these years. Okay? But it is
19 in the ordinary meeting of 2013 and reelected in
20 the ordinary meeting of 2014.

21 Q. Is it correct that you are no longer a
22 director of Petrobras?

23 A. That's correct.

24 Q. Would you take a look at page 108 in the
25 Portuguese, 103 in the English. There is a

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2 description of the directors of Petrobras and a
3 little biography of you.

4 A. Um-hum.

5 Q. Do you see that? Counsel, do you see
6 that?

7 MR. MUSTOKOFF: I do. Thank you.

8 Q. On 103. I am going to ask you about the
9 degrees but I just want to make things simple. Is
10 that an accurate biography of you, sir?

11 A. Yes.

12 Q. Where it describes that you are a
13 chartered financial analyst since 1997, that's
14 correct?

15 A. Um-hum.

16 Q. You have to answer yes or no.

17 A. Yes.

18 Q. Then it describes the degrees that you
19 have gotten. Is that accurate and complete?

20 A. It is.

21 Q. Do you have any other postgraduate
22 degrees?

23 A. No.

24 Q. Any other licenses?

25 A. No.

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2 Q. Any other postgraduate training?

3 A. No.

4 Q. Would you take a look --

5 A. Excuse me. I am board certified by the
6 IBGC, and I am a certified analyst under APIMEC
7 regulation.

8 Q. Is that different from being a chartered
9 financial analyst?

10 A. It is. It is a Brazilian
11 self-regulation, and the CFA is basically an honor
12 designation. It is not a regulatory.

13 MR. MUSTOKOFF: Honorary?

14 THE WITNESS: This is not the word. It
15 is not a regulatory certification per se.
16 It is a badge sort of.

17 Q. Can you turn to page 106 of the
18 Portuguese, which is 100 of the English, Exhibit
19 20. Am I correct that it lists you there as one of
20 the directors of Petrobras?

21 A. That's correct.

22 Q. Then it has got a footnote that is 3,
23 and does that say appointed by the minority common
24 shareholders?

25 A. Yes.

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2 Q. Can you just explain to us and maybe for
3 a future jury what it means to be appointed by
4 minority common shareholders?

5 A. According to Brazilian legislation,
6 minority shareholders have the right to nominate
7 and elect a director by what is called the separate
8 voting mechanism. So the controlling shareholder
9 elects a slate, and minority shareholders if they
10 reach a certain threshold are able to elect a
11 member independently.

12 The holders of non-voting shares have a
13 similar right and they elect another director,
14 which in this case was Mr. Monforte.

15 Q. By non-voting shares, you mean the
16 preferred shares?

17 A. PNs.

18 Q. Just while we are on the document, you
19 testified at the beginning of today about the unit
20 that was used for testing of impairment with
21 respect to refineries. Do you recall that?

22 A. Yes.

23 Q. I just want to ask you so we are talking
24 about the same thing about certain sections of the
25 20-F and see whether the policy that is described

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2 there is the one that you were discussing in the
3 audit committee.

4 A. Okay.

5 Q. So would you turn to page F 21 of
6 Exhibit 21, and it is page F 20 of Exhibit 20,
7 section 3.10.

8 A. Okay.

9 Q. Do you see there is language that I have
10 highlighted?

11 A. Yes.

12 MR. MUSTOKOFF: For the benefit of those
13 around the table, the English, it says "For
14 the impairment test assets are grouped at
15 the smallest identifiable group that
16 generates largely independent cash inflows
17 from other assets or groups of assets (the
18 cash-generating unit.)"

19 Q. Did I read that correctly?

20 A. Yes.

21 Q. Is that the policy that you were
22 addressing with management and with PWC?

23 A. Yes. In essence the argument surrounded
24 the smallest level of assets for which you could
25 identify cash flows, and my argument was that we

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2 could in fact identify cash flows on a much lower
3 level than the overall refining park.

4 Q. It refers to largely independent cash
5 flows. Is that right?

6 A. Yes.

7 Q. Okay. Then if you turn to page F 26, do
8 you see that there is a section that says
9 downstream CGU's?

10 A. Um-hum.

11 Q. Is the answer yes? I'm sorry, sir, I
12 need to get a yes or no.

13 A. Yes.

14 MR. MUSTOKOFF: And for the benefit of
15 those around the table, that I have
16 highlighted that on page F 26.

17 Q. As you understand it, is that an
18 accurate description of the policy that Petrobras
19 was following?

20 A. If you give me a minute.

21 That is what management defended. Yes.

22 Q. Thank you. Now you can just put that
23 to the side. At various points in your testimony
24 you referred to the controller. Do you recall
25 that?

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2 A. Yes.

3 Q. In the context of Petrobras, who is the
4 controller?

5 A. The controller shareholder is the
6 federal government of Brazil.

7 Q. Under the bylaws of Petrobras, was the
8 federal government of Brazil entitled to appoint
9 members to the board?

10 A. Under Brazilian law, yes. The
11 controlling shareholder, that is the definition of
12 controlling shareholder appoints the majority of
13 the members of the board.

14 Q. And during the time period that you were
15 on the board before the change that came around the
16 time that Mr. Aldemir joined, you understand the
17 time period I am referring to?

18 A. Um-hum.

19 Q. Again you need to say yes.

20 A. Yes.

21 Q. During that time period who did you
22 understand to be the members of the board who were
23 appointed by the government?

24 A. Mr. Guido Mantega as chairman. I can
25 refer to the document.

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2 Q. That is one reason I gave it to you.

3 A. All right. So...

4 Q. Just tell us which document you are
5 looking at.

6 A. The 20-F in Portuguese, page 106. All
7 the top seven names on this list were appointed by
8 the government, so the exceptions were myself, Mr.
9 Monforte and Mr. Sinedino.

10 Q. Were any of the top seven also at the
11 time they were on the board ministers with the
12 federal government of Brazil?

13 A. Yes.

14 Q. Which ones?

15 A. Mr. Mantega, Ms. Belchior, Mr. Zimmerman
16 was the deputy minister of mines and energy and
17 Mr. Continho was the CEO of the development bank.

18 Q. Is it accurate to say that during the
19 time period you were on the board, you disagreed
20 with some of the votes and some of the decisions of
21 the directors appointed by the controller?

22 A. That's correct.

23 Q. Is it accurate that you thought some of
24 those decisions did not maximize value for
25 Petrobras' shareholders?

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2 A. That too.

3 Q. And is it correct that you thought at
4 times that the decisions were designed maybe to
5 advance the government's political interests at the
6 expense of the shareholders?

7 A. That is true.

8 Q. Did the decisions that you thought might
9 have been designed to advance the government's
10 political interests at the expense of the
11 shareholders include Petrobras' pricing policy?

12 A. It does.

13 Q. Can you explain that to us, how that
14 pricing policy might have advanced the interests
15 of -- the political interests of the government at
16 the expense of the shareholders?

17 A. Okay. It seems clear that Petrobras'
18 prices since 2011 lagged significantly behind what
19 may be called international parity, which was the
20 policy up until then. And as a matter of fact, as
21 I pointed in my votes and on my complaint to the
22 CVM, the policy diverged from what the law stated,
23 which is that prices should follow a free market,
24 free competition system.

25 So I had repeatedly brought this to the

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2 board. We had major discussions around the end of
3 2013. We reached the launch of a pricing policy,
4 which again was deemed confidential, to the board,
5 and which as a matter of fact didn't have any real
6 consequence. Prices kept lagging behind the
7 international parity, so that is one example. The
8 other one is a capital expenditure problems that I
9 mentioned before.

10 Q. Can you elaborate on that?

11 A. Sure. It seemed that Petrobras by means
12 of its large budget for cap expenditure became in
13 the eyes of the controlling shareholder a
14 significant lever for development and for
15 potentially political gain, and this is one reason
16 that might justify the company undertaking projects
17 that had a negative net present value.

18 Q. You are referring to RNEST, Abreu e
19 Lima?

20 A. Yes. I mean just because this is the
21 one that I studied more deeply, but the way I
22 looked at it, it was the signal of a bad
23 decision-making process that probably repeated
24 itself in other situations. It was a systemic
25 issue.

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2 Q. Was another of the bad decisions the
3 assignment of oil and gas rights from the
4 government of Brazil to Petrobras?

5 A. Absolutely. That is a very good
6 example.

7 Q. Do you want to explain that one?

8 A. Sure. This is another situation that
9 fell within the cracks of that governance system
10 that I mentioned to you. We had certain bylaw
11 provisions that again established the threshold of
12 authorizations and so forth.

13 The bylaws stated that the company
14 needed to set the limits for many different items
15 on the bylaws, if I'm not mistaken, Article 33, and
16 interestingly the bylaws said that annual
17 assignment of limitations had to happen especially
18 for certain items and it jumped item 6 or 7.

19 Can I ask the lawyers for the company
20 just to remind me the name of the number of the
21 article because they might have this by heart?

22 Q. They will tell me.

23 A. That's fine. They know what I am
24 talking about. So there is one particular item
25 that did not fall into this especially provision,

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2 which didn't mean that the board didn't have to set
3 the limitations but it didn't specially need to set
4 the limitation.

5 So what happened was that it did not set
6 a limitation and as a consequence the company
7 interpreted that it was free to contract with the
8 controlling shareholder without any limitation
9 whatsoever, which is particularly strange in the
10 context that this would be a related party
11 transaction.

12 So the assignment of rights actually
13 happened in two moments. One was the rights issue
14 of 2010 and the other was the so-called excess
15 reserves that to my knowledge was not even complete
16 because it was a proposition approved by the
17 government but that was not executed. But the idea
18 was that Petrobras would pay 15 or 20 billion reais
19 to the government to get access to excess reserves
20 from those areas, and that matter did not come to
21 the board. Conveniently the company would prepay
22 billions in annual installment before it even begun
23 to work on those areas.

24 So you are completely right, this is
25 another example of cracks in the governance system,

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2 in this case addressing issues of the controlling
3 shareholder.

4 Q. Were you concerned that some of these
5 decisions had immediate impact on shareholder
6 value?

7 A. Absolutely.

8 Q. Including the capital expenditure plan?
9 Is that correct?

10 A. Yes.

11 Q. And including the expenditures with
12 respect to Abreu e Lima, correct?

13 A. Not exactly. I mean we are talking
14 about the assignments of rights for exploration and
15 production and Abreu e Lima is downstream.

16 Q. Okay. I should have asked the question
17 better. Were you concerned that the capital
18 expenditures on Abreu e Lima could have an
19 immediate impact on shareholder value?

20 A. Oh, yes. Mostly it already had, because
21 when I was there, most of the money was already
22 spent.

23 Q. Okay. It wasn't a secret how much money
24 was being spent for Abreu e Lima, correct?

25 A. No.

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2 Q. And in fact it was also well known that
3 it was running over budget, correct?

4 MR. MUSTOKOFF: Objection to form.

5 MR. LIMAN: Withdrawn.

6 Q. Let me ask the question again in a way
7 that maybe won't draw his objection. To your
8 knowledge, was it publicly known that Abreu e Lima
9 had to exceed its original budget?

10 A. It was publicly known but maybe not to
11 the final extent, because not even to Petrobras the
12 final number became clear during my tenure. I
13 don't know if it is clear now.

14 Q. Okay. Is it correct that you viewed
15 your role as being an advocate for shareholder and
16 shareholder value?

17 A. Yes, and for the company.

18 Q. And for the company. Is it right that
19 you clashed at some points with the directors who
20 were appointed by the controller?

21 A. That's correct.

22 Q. And you felt free to speak your mind.
23 Is that accurate?

24 A. No, that is not accurate.

25 Q. When there were decisions being made in

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2 board meetings did you express your -- if you
3 disagreed with the decision did you express your
4 views?

5 A. I did. What I must say is that the
6 company was very fair in recording my disagreement,
7 but especially in 2013 when I was the sole
8 independent on the board, I have to say that it was
9 not easy to speak out many times. There were
10 severe pressures, especially from the chairman of
11 the board, against many of my statements.

12 Q. Did you get the feeling that one of the
13 reasons why the chairman took you off of the audit
14 committee was because of your disagreements with
15 the controller?

16 A. Because of my disagreements with him.

17 Q. Okay.

18 A. I didn't talk to the controlling
19 shareholder.

20 MR. LIMAN: I think that is all I have
21 got for this evening. What I would like to
22 do is take a break and get some sleep and
23 try to keep it short tomorrow. But thank
24 you, and we will break for the evening.

25 Thank you.

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2 THE WITNESS: Thank you.

3 THE VIDEOGRAPHER: The time is 7:08 p.m.

4 We are going off the record.

5 (Time noted: 7:08 p.m.)

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8 Subscribed and sworn to

9 before me this day of , 2016.

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C E R T I F I C A T I O N

I, Joseph R. Danyo, a Shorthand Reporter
and Notary Public, within and for the State of New
York, do hereby certify:

That I reported the proceedings in the
within entitled matter, and that the within
transcript is a true record of such proceedings.

I further certify that I am not related,
by blood or marriage, to any of the parties in this
matter and that I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 19th day of April, 2016.

JOSEPH R. DANYO

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I N D E X

3

Witness

Page

4

MAURO RODRIGUES da CUNHA

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E X H I B I T S

8

Cunha

Page

9

Exhibit 1 Minutes of 72nd meeting of
audit committee dated
February 25, 2014

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Exhibit 2 Letter to the CVM

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Exhibit 3 Minutes of 73rd meeting of
audit committee

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Exhibit 4 Minutes of board meeting of
April 25, 2014

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Exhibit 5 Letter dated October 21, 2014

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Exhibit 6 Document

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Exhibit 7 e-mail and attached document

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Exhibit 8 Document

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Exhibit 9 Petition to the CVM signed by
Mr. Cunha and Director Monforte

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Exhibit 10 Minutes of board of directors
meeting of December 12, 2014

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Exhibit 11 Report

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Exhibit 12 Minutes of January 23, 2015
board meeting

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Exhibit 13 Document

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1 APRIL 18, 2016 - MAURO RODRIGUES da CUNHA

2 I wish to make the following changes for

3 The following reasons:

4 PAGE LINE

5 CHANGE:

6 REASON:

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24 REASON:

25 Hudson Reporting & Video, Inc. 1-800-310-1769

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